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***Questions and Answers
on Real Estate***

Questions and Answers on Real Estate

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ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS •
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Preface

THE real estate licensee is a productive and meaningful member in our society, and bears an important relationship to the community of which that person is an integral part. If a community is to be satisfying, it has problems of urban planning, hygiene, education, spiritual development, good streets, sewage, arts — all of which require wise handling. All of these matters are closely related to the real estate business. Every public improvement is a real estate project. It is expected that the real estate licensee should have some expertise in these areas of activity. Thus, states have recognized that real estate is of such a public nature that it is a fit subject for regulation by the state. As a result, every state in the United States, the District of Columbia, the Virgin Islands, Guam and the Canadian Provinces have enacted license laws which set forth prerequisites for licensure. Good reputation and competence are the cornerstones for a license. Education is basic to improve competency.

In every state and Canadian Province, private and public schools offer real estate courses to improve competency and assist the applicant to qualify for a real estate license.

Since the First Edition of *Questions and Answers on Real Estate* was published in 1948, the book has been the main tool for applicants taking these examinations. To date, more than 1,000,000 copies have been sold, which is an eloquent testimonial as to its value. Brokers and salespersons keep the book "at elbow" for ready and useful reference. Attorneys also find it a useful reference in connection with many real estate problems encountered.

Increased real estate activities have witnessed a volume of legislation, Federal and State, affecting many phases of the real estate business, with much of it oriented toward consumer protection. Court decisions interpreting and implementing such legislation, also have an important impact upon real estate practice.

Mindful of this impact, states have significantly increased educational requirements and made examinations for licensure more exacting, in order to improve competency of licensees, for the protection of the public.

In this laudable endeavor to elevate standards and improve competency, this new Ninth Edition of *Questions and Answers on Real Estate* has been revised and enlarged. Moreover, the Ninth Edition has been made more readily adaptable for use as a textbook in schools and colleges.

I gratefully acknowledge the encouragement, cooperation and advice of hundreds of license law officials, past and present, with whom I have been associated for a great many years.

A special debt is owed to my cousin and former law partner, Roger I. Harris, Esq., former Vice President and Chief Counsel, General Dynamics Corporation, who contributed the chapter on Condominiums, Cooperatives, Syndications and Real Estate Investment Trusts.

R. W. S.

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THIS BOOK is respectfully dedicated to the many license law officials in this country and Canada, who, by their conscientious application to duty in the administration and enforcement of license laws and in the promotion of educational courses, institutes, and clinics, are doing so much to safeguard the interests of the public, protect the legitimate broker, and elevate the standards of real estate practice.

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Explanation of abbreviations used:

A	Atlantic
Cal. App.	California Appellate
F.(2)	Federal Reporter (Second Series)
Ill. App.	Illinois Appellate
N.Y. App.	New York Appellate
N.Y.S.	New York Supplement
N.E.	Northeastern
N.W.	Northwestern
P.	Pacific
Pa. Sup.	Pa. Superior
So.	Southern
S.E.	Southeastern
S.W.	Southwestern
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Introduction

IT IS of fundamental importance to know that the extent of the right which a man acquires in property can be no greater than that enjoyed by his predecessor in title. This is a principle very frequently met with in connection with deeds and mortgages. Very often an owner will be heard to exclaim: "What do you mean I do not own this property? I have a deed to it." Yet if the previous owner did not own the entire tract or there was some encumbrance against it, it follows that his purchaser received no better title than he had. Therefore, a cautious and prudent purchaser will have the title examined in order to ascertain the extent of the present owner's interest in the property. And so, it is often necessary to trace the title through a long line of previous owners, in order to ascertain the extent of the original owner's interest in the subject property.

From time to time, a state will pass "curative" acts intended to correct defects in the title, such as validating improper acknowledgments or executions. In the few states where registered titles pertain under the Torrens system, a purchaser relies upon the registered title, without further search.

By way of further introduction, it should be noted that the rights a person has in real estate are determined and protected by the law. The purpose of law it may be said, is to define and to assert legal rights and, as collateral thereto, to prevent and punish legal wrongs. Blackstone defines law as "a rule of civil conduct prescribed by the supreme power in the State, commanding what is right and prohibiting what is wrong." In the widest sense of the word, law may be said to be a "rule of action prescribed by a superior which an inferior is bound to obey." The social concept of law is that it consists of rules for the guidance of man in his relations to his fellow man and to organized society as well. There are two types of law: (1) the unwritten law; (2) the written law. By the unwritten law we mean the customs of a community. Custom is not to be confused with usage. Custom has the force of law whereas usage is merely a fact. There may be usage without custom, but there can be no custom without usage. "Usage," it is said, "consists merely of the repetition of acts, while custom is created out of their repetition." The common law is a set of cases establishing principles of law. Written law embraces constitutions, statutes, and court decisions. The Federal Constitution is the fundamental law of the land and is representative of a system of laws and customs. A statute is a law enacted by the legislative body of the state or by the Federal Congress. A court is a body in the government to which is delegated the public administration of justice. Civil courts are created by statutes which define their composition and jurisdiction. Courts of law are not law-making bodies. They have the very important function, which sometimes closely approaches legislation, of interpreting the Constitution of the United States, the laws passed by Congress, the state constitutions, and state statutes. If a constitutional question is involved, for example, the deprivation of property without due process of law, recourse, by appeal, may be had to the United

States Supreme Court, the court of last resort. Thus, it can be seen that the decisions of the courts are of the utmost importance as the source of all law. The body of the Federal law applies generally throughout the country, but each state, by reason of its particular development and the peculiar conditions and influences which prevail, has its own laws based upon its own constitution, court decisions, and customs. Court decisions, as well as statutes, may be tempered by the social needs of the society within the confines of the particular state. In most of the states in the eastern part of the country, the common law, as introduced from England, predominates, whereas in the South, codified law, resulting from French and Spanish influence, is the rule. It must be realized that there is no body of real estate law applicable to all of the states or even to a majority, but that the laws relating to deeds, mortgages, landlord and tenant, and other subjects differ materially even from one state to its immediate neighbor. Fundamental concepts and principles, however, are applicable to practically all the states, so that attention and discussion are directed, in the main, to the fundamentals of the law as it applies to each subject discussed. The same approach is true of the problems, questions, and answers included in this work.

Definitions of Real Estate Terms

Abandonment

A conveyance or recorded instrument used to terminate a homestead.

Absolute fee simple title

One that is unqualified; it is the best title one can obtain.

Abstract of title

A condensed history of the title, consisting of a summary of the various links in the chain of title, together with a statement of all liens, charges, or encumbrances affecting a particular property.

Acceleration clause

A clause in a mortgage, land purchase contract or lease stating that, upon default of a payment due, the balance of the obligation should at once become due and payable.

Access right

The right of an owner to have ingress and egress to and from his property.

Accretion

Addition to the land through natural causes—usually by change in water flow.

Acknowledgment

A formal declaration made before a notary public or other person empowered to perform the service, by the signatory to the instrument, as to the genuineness of the signature.

Acre

A measure of land, 160 square rods (4,840 square yards, 43,560 square feet).

Administrator

A person appointed by court to administer the estate of a deceased person who left no will; that is, who died intestate.

Advance fee

A fee paid in advance of any service rendered in the sale of a property or in obtaining a loan.

Ad Valorem

A tax according to a fixed percentage of its value.

Adverse possession

The right of an occupant of land to acquire title against the real owner, where possession has been actual, continuous, hostile, visible, and distinct for the statutory period.

Affiant

A person who has made an affidavit.

Affidavit

A statement of declaration reduced to writing, and sworn or affirmed to before some officer who has authority to administer an oath or affirmation.

Agent

One who represents another from whom he has derived authority.

Agreement of sale

A written agreement whereby the purchaser agrees to buy certain real estate and the seller agrees to sell upon terms and conditions set forth therein.

Air rights

The ownership of the right to use, control or occupy the air space over a designated property.

Alienation

The transfer of real property by one person to another.

Alluvion

Also alluvium. Soil deposited by accretion; increase in land on shore or bank of river due to change in flow of stream.

Amenities

The satisfaction of enjoyable living to be derived from a home; or a beneficial influence arising from the location of the property.

Amortization

The liquidation of a financial obligation on an installment basis.

Annuity

A sum of money or its equivalent that constitutes one of a series of periodic payments.

Appellant

The party who takes an appeal to a higher court.

Appellee

The party against whom the appeal is taken to a higher court.

Appraisal

An estimate of quantity, quality, or value. The process through which conclusions of property value are obtained; also refers to the report setting forth the estimate and conclusion of value.

Appraisal by capitalization

An estimate of value by capitalization of productivity and income.

Appraisal by comparison

Comparability to the sale prices of other similar properties.

Appraisal by summation

Adding together of parts of a property separately appraised to form the whole: for example, value of the land considered as vacant added to the cost of reproduction of the building, less depreciation.

Appurtenance

That which belongs to something else; something which passes as an incident to land, such as a right of way.

Arbitrage

The difference between the interest of a wrap-around mortgage and the prime mortgage.

Architect

A person whose profession is designing buildings, drawing up plans, and generally supervising construction of the building.

Arpen

French measurement term, being $\frac{7}{8}$ of one acre.

Assessed valuation

Assessment of real estate by a unit of government for taxation purposes.

Assessment

A charge against real estate made by a unit of government to cover the proportionate cost of an improvement, such as a street or sewer.

Assignee

The person to whom an agreement or contract is assigned.

Assignment

The method or manner by which a right, a specialty, or contract is transferred from one person to another.

Associate broker

A person who has qualified as a real estate broker, but works for a broker named in the associate broker's license.

Attestation

The witnessing of a signature to an instrument at the request of the person who signed it.

Avulsion

Removal of land from one owner to another when a stream suddenly changes its channel.

Backfill

The replacement of excavated earth into a hole or against a structure.

Balustrade

A small supporting column for a handrail.

Bargain and sale deed

Deed which conveys the property for valuable consideration.

Barge board

A wide trim board placed on the ends of a gable roof.

Base and meridian

Imaginary lines used by surveyors to find and describe the location of lands.

Baseboard

The board skirting the walls of a room at the floor line.

Basement floor

The lowest floor level in a building.

Bench marks

A location indicated on a durable marker by surveyors.

Bilateral contract

Both parties expressly enter into mutual engagements (reciprocal).

Binder

An agreement to cover a down payment for the purchase of real estate as evidence of good faith on the part of the purchaser; in insurance: a temporary agreement given to one having an insurable interest, and who desires insurance subject to the same conditions which will apply if, as, and when a policy is issued.

Blanket mortgage

A single mortgage which covers more than one piece of real estate.

Blight

A reduction in the productivity of real estate due to a variety of causes, which have a harmful effect upon the appearance of the property area affected.

Block-busting

Attempting to persuade persons to sell or move out by creating or exploiting fears of racial change in the neighborhood; prohibited by federal law.

Board foot

Unit of measurement for lumber; one foot long, one foot wide, one inch thick.

Bona fide

In good faith, without fraud.

Bond

Any obligation under seal. A real estate bond is a written obligation, usually issued on security of a mortgage or a trust deed.

Bridging

Small wood or metal pieces used to brace floor joists.

Broker

One employed by another, for a fee, to carry on any of the activities listed in the license law definition of the word.

B.T.U.

British thermal unit. The quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

Building code

Regulating the construction of buildings within a municipality by ordinance or law.

Building line

A line fixed at a certain distance from the front and/or sides of a lot, beyond which no building can project.

Bundle of legal rights

Establishes real estate ownership; consists of right to sell, to mortgage, to lease, to will, to regain possession at end of a lease (reversion); to build and remove improvements; to control use within the law. May be compared to a bundle of sticks, each stick representing a separate right or privilege.

Business chance broker

One who negotiates the sale of a mercantile business for another for a fee.

Cadastre

A public record of the extent and value of land for taxation purposes.

Caveat Emptor

"Let the purchaser beware"; the buyer is duty-bound to examine the property he is purchasing and he assumes conditions which are readily ascertainable upon view.

Certificate of eligibility

A certificate issued by the Veteran Administration office stating that the veteran applicant is qualified for a VA loan.

Certificate of no defense

An instrument, executed by the mortgagor, upon the sale of the mortgage, to the assignee, as to the validity of the full mortgage debt.

Certificate of reasonable value

Written statement issued by the V.A. as to the maximum.

Certified check

A check drawn by a depositor, which the bank certifies as to the amount drawn, and against which the depositor cannot stop payment.

Certiorari

A writ obtained from an appellate court, directing a lower court to send up the record for review and determination or for trial by the lower court.

Cestui Que Trust

The person who has a beneficial interest in an estate, the legal title to which is vested in another person.

Chain

Unit of land measurement—66 feet.

Chain of Title

A history of conveyances and incumbrances affecting the title.

Chattel

Personal property, such as household goods or removable fixtures.

Check

A negotiable instrument; also, see quadrangle.

Chimney cap

The finishing course at the top of the chimney.

Closing statement

An accounting of funds in a real estate sale made by a broker to the seller and buyer, respectively.

Cloud on the title

An outstanding claim or encumbrance which, if valid, would affect or impair the owner's title; a judgment, or dower interest.

Code of ethics

A set of rules by a professional organization, prescribing standards of ethical conduct which its members are bound to obey.

Cognovit note

Note authorizing confession of judgment.

Co-insurance

A usual insurance policy provision, which requires the insured to carry insurance in an amount equal to 80% of the property's replacement value; also, where two or more insurance companies carry the risk in certain proportional amounts, upon large commercial properties.

Collateral

Security given for the fulfillment of a debt or obligation.

Color of title

That which appears to be good title, but as a matter of fact, is not good title; for example, a defective deed.

Commingle

To mingle or mix a client's funds in the broker's personal account.

Commission

Sum due a real estate broker for services in that capacity; the administrative and enforcement tribunal of real estate license laws.

Common law

Body of law that grew up from custom and decided cases (English law) rather than from codified law (Roman law).

Community property

Property accumulated through joint efforts of husband and wife living together.

Completion bond

A surety bond posted by a developer or contractor to guarantee that the work will be performed in accordance with specifications.

Compound Interest

Interest paid on original principal and also on the accrued and unpaid interest.

Condemnation

Taking private property for public use, with compensation to the owner, under the right of eminent domain.

Condominium

Individual ownership units in a multi-family structure, combined with joint ownership of common areas of the building and ground.

Conduit

A pipe or channel for conveying fluids or wires.

Confession of judgment

An entry of judgment upon the debtor's voluntary authority to any attorney to do so in his behalf.

Construction loan

Provides for progressive payments of the loan proceeds during erection of the building.

Constructive eviction

Breach of a covenant of warranty or quiet enjoyment; for example, the inability of a purchaser or lessee to obtain possession by reason of a paramount outstanding title.

Constructive notice

Notice given by the public records.

Contract for sale

Also familiarly known as Land Sales Contract, Contract to Purchase Real Estate, or a Conditional Sales Contract. (See Land Sales Contract.)

Conventional mortgage

One which is not insured by the F.H.A. or guaranteed by the V.A.

Conveyance

The means or medium by which title to real estate is transferred.

Cornice

An ornamental projection at the top of a wall.

Cost plus contract

A construction contract which requires the owner to pay for the cost of labor and material, plus a fixed percentage of the contract price to the builder, as his profit.

Covenant

An agreement between two or more persons, by deed, whereby one of the parties promises the performance or nonperformance of certain acts, or that a given state of things does or does not exist.

Coverture

The status of a married woman.

Cubage

Front or width of building multiplied by depth of building and by the height, figured from basement floor to the outer surfaces of walls and roof.

Cul de sac

A passage way with one outlet; a blind alley.

Curtesy

The right which a husband has in his wife's estate at her death.

Curtilage

Area of land occupied by a building and its yard and outbuildings, actually enclosed or considered enclosed.

Damnum Absque Injuria

A loss which does not give rise to an action for damages against the person causing it.

Db a

Abbreviation for "doing business as."

Declaration of no set-off

See Certificate of no defense.

Decree of Foreclosure

Decree by a court upon the completion of foreclosure of a mortgage, lien or contract.

Dedication

An appropriation of land by an owner to some public use together with acceptance for such use by or on behalf of the public.

Deed

A writing by which lands, tenements, and hereditaments are transferred, which writing is signed, sealed, and delivered by the grantor.

Default

The nonperformance of a duty, whether arising under a contract, or otherwise; failure to meet an obligation when due.

Defeasance

An instrument which nullifies the effect of some other deed or of an estate.

Deficiency judgment

The difference between the indebtedness sued upon and the sale price or market value of the real estate at the foreclosure sale.

Demise

A conveyance of an estate or interest in real property by lease or will.

Depreciation

Loss in value, brought about by deterioration through ordinary wear and tear, action of the elements, or functional or economic obsolescence.

Depth table

Tabulation of factors representing the rating of value per front between a selected "standard" depth (usually 100 feet) and other lots of greater or lesser depth.

Devise

A gift of real estate by will or last testament.

Direct deduction mortgage

A mortgage which requires periodic payment reduction upon the principal.

Discount

A loan placement charge made by the lending institution to the seller, by increasing the yield on the investment (also known in the trade as Points).

Discrimination

In real estate, prejudice or refusal to rent or sell to a person because of race, color, religion or ethnic origin.

Dispossess

To deprive one of the use of real estate.

Domicile

The place where one has his permanent residence and, usually, is a registered voter.

Dower

The right which a wife has in her husband's estate at his death.

"Dummy" purchaser

Also known as "straw man." Purchasing a property in the name of one financially irresponsible, in order to conceal the identity of the true purchaser.

Duplex

A single two-story structure designed for two-family occupancy.

Duress

Unlawful constraint exercised upon a person, whereby he is forced to perform some act, or to sign an instrument, against his will.

Earnest money

Down payment made by a purchaser of real estate as evidence of good faith.

Easement

The right, liberty, advantage or privilege which one individual has in lands of another (a right of way).

Economic life

The period over which a property may be profitably utilized.

Egress

The right to return from a tract of land (used with ingress).

Ejectment

A form of action to regain possession of real property, with damages for the unlawful retention.

Emblements

The right of a tenant to harvest and remove, after his tenancy has ended, such annual products of the land (corn, wheat), as have resulted from his own labor and care; also known as "way-growing crop."

Eminent domain

The right of the people or government to take private property for public use upon payment of compensation.

Encroachment

A building, part of building, or obstruction which intrudes upon or invades a highway or sidewalk or trespasses upon property of another.

Encumbrance

A claim, lien, charge, or liability attached to and binding upon real property, such as a judgment, unpaid taxes, or a right of way; defined in law as any right to, or interest in, land which may subsist in another to the diminution of its value, but consistent with the passing of the fee.

End loan

Also called "Take Out" financing, whereby the lender, who provides financing during the construction period of a building project, will also provide permanent financing for the ultimate purchaser.

Entity

A thing that has individual existence; a corporation is a legal entity.

Equity

The interest or value which an owner has in real estate over and above the mortgage against it; system of legal rules administered by courts of chancery.

Equity of redemption

Right of original owner to reclaim property sold through foreclosure proceedings on a mortgage, by payment of debt, interest, and costs.

Erosion

The wearing away of land through processes of nature as by streams and winds.

Escalator clause

A clause in a mortgage or lease, which provides for an increase in rent or interest based upon fluctuations in certain economic indices, costs or taxes.

Escheat

Reversion of property to the sovereign state owing to lack of any heirs capable of inheriting.

Escrow

A deed delivered to a third party for the grantee to be held by such party until the fulfillment or performance of some act or condition.

Estate

The degree, quantity, nature and extent of interest which a person has in real property.

Estate in reversion

The residue of an estate left in the grantor, to commence in possession after the termination of some particular estate granted by him. In a lease, the lessor has the estate in reversion after the lease is terminated.

Estoppel certificate

See Certificate of no defense.

Et al

An abbreviation for *alii*, “and others.” Also used as an abbreviation for *alius*, “and another.”

Ethics

That branch of moral science, which treats of the duties which a member of a profession or craft owes to the public, to his client, and to the other members of the profession.

Et ux.

Abbreviation for *et uxor*, meaning “and wife.”

Eviction

A violation of some covenant in a lease by the landlord, usually the covenant for quiet enjoyment; also refers to process instituted to oust a person from possession of real estate.

Exclusive agency

The appointment of one real estate broker as sole agent for the sale of a property for a designated period of time.

Execution

A writ issued by a court to the sheriff directing him to sell property to satisfy a debt.

Executor

A person named in a will to carry out its provisions.

Ex officio

By virtue of his office. For example, in Iowa and Nebraska, the Secretary of State is *ex officio* chairman of the Real Estate Commission.

Extender clause

Clause in an exclusive listing contract, which carries the original exclusive period over for an additional period, to protect the broker, if a sale is made to a prospect he obtained during the original listing period.

Extension agreement

Agreement between mortgagee and mortgagor to extend the maturity date of the mortgage after it becomes due.

Exculpatory clause

A clause in an agreement of sale, freeing the broker from any blame in the transaction.

Fair market value

The best price which a property would bring upon the open market to a willing seller, not compelled to sell, from a willing buyer, not compelled to buy.

“Fannie Mae”

The secondary mortgage market. It provides a market for mortgages held by primary lenders, such as banks and savings and loan associations, and provides the primary market with a ready market for mortgages, so as to permit a greater turnover of money for loans.

F N M A (Fannie Mae)

Federal National Mortgage Association.

Farm lease

The farm tenant usually pays a rental based on a crop-sharing basis.

Fee-tail estate

An estate of inheritance given to a person and the heirs of his body. If the grantee dies without leaving issue, the estate terminates and would revert to the grantor.

Fee simple

The largest estate or ownership in real property; also known as fee simple absolute.

Federal home loan bank

Composed of 12 regional banks, which provide credit reserves for savings and home financing institutions.

F.H.A.

Federal Housing Authority; an agency of the federal government that insures real estate loans.

F S L I C

Federal Savings and Loan Insurance Corporation, an agency of the federal government, which insures depositors up to \$40,000.

Financing charge

Charge made by lender at time mortgage loan is made.

Finder's fee

A fee or commission paid to a broker for obtaining a mortgage loan for a client or for referring a mortgage loan to a broker. It may also refer to a commission paid to a broker for locating a property; or, to an unlicensed person, who finds a purchaser for property, but does not promote or negotiate the sale.

Fixture

An article that was once personalty, but has become real estate by reason of its permanent attachment in or to the improvement.

Firm commitment

A commitment by the F.H.A. to insure a mortgage on specified property with a specified mortgagor.

Flashing

Metal strips placed around roof openings to provide water tightness.

Force majeure

In Roman law, an act of God; frequently found in construction contracts to exonerate builder from liability for delay due to an act of God, or other unavoidable delays in completion.

Forcible entry and detainer

A legal action to recover possession of premises which are unlawfully held.

Foreclosure

A court process instituted by a mortgagee or lien creditor to defeat any interest or redemption which the debtor-owner may have in the property.

Foreshore

Land between high-water mark and low-water mark.

Foundation

The walls of a building below the first or ground floor.

Fraud

The intentional and successful employment of any cunning, deception, collusion, or artifice, used to circumvent, cheat or deceive another person, whereby that person acts upon it, to his detriment, loss, or disadvantage.

Freehold

An estate in fee simple or for life.

Front foot

A standard of measurement, one foot wide, extending from street line for a depth, generally conceded to be 100 feet.

Fructus industriales

Land products produced by the labor of the occupant.

Fructus naturales

Products produced by the powers of nature alone.

Gable roof

A pitched roof with sloping sides.

G.I.

A member or veteran of the United States military service.

G.I. loan

Loan guaranteed by the Veterans Administration under Servicemen's Readjustment Act of 1944, as amended; only honorably discharged veterans and their widows are eligible.

General warranty

A covenant in the deed whereby the grantor agrees to protect the grantee against the world.

Gradient

The slope, or rate of increase or decrease in elevation, of a surface, road or pipe, expressed in inches of rise or fall per horizontal linear foot or percent.

Graduated lease

One in which the rent will be increased or decreased after an initial period.

Grantee

A person to whom real estate is conveyed; the buyer.

Grantor

A person who conveys real estate by deed; the seller.

G. R. I.

Graduate Realtors Institute; one who successfully completes the three-year program given by the state Real Estate Association.

Gross lease

A lease of property whereby lessor is to meet all property charges regularly incurred through ownership.

Ground lease

A long-term lease for land upon which a building is erected by the tenant, in accordance with agreed-upon specifications.

Ground rent

A rent reserved by a grantor to himself, his heirs and assigns in conveying land in fee.

Habendum clause

The "To Have and To Hold" clause which defines or limits the quantity of the estate granted in the premises of the deed.

Hand money

Same as an earnest money deposit.

Hectare

A metric measure of surface area (2.471 acres).

Hereditaments

The largest classification of property; includes lands, tenements, and incorporeal property, such as rights of way.

Holdover tenant

A tenant who remains in possession of leased property after the expiration of the lease term.

Holograph will

A will written in longhand by the testator.

Homestead

Real estate occupied by the owner as a home; the owner enjoys special rights and privileges.

Horizontal property act

Law relating to condominiums.

Housing for the Elderly

A project designed specially for older persons (62 years or over) which provides living unit accommodations, and common social and activities space, and facilities for health and nursing services for residents.

H.U.D.

Department of Housing and Urban Development.

Hypothecate

To give a stock as security without giving up possession of it.

Implied warranty or covenant

The law, by judicial power, will supply a guaranty of assurance, if the circumstances in the case warrant.

Inchoate

Not yet vested or completed. Right to dower is inchoate until the husband dies.

Indenture

A formal written instrument made between two or more persons in different interests; name comes from practice of indenting or cutting a deed on the top or side in a waving line.

Ingress

Access to enter a tract of land; used with egress—to go in and out.

Injunction

A decree of a court of equity to restrain and enjoin a defendant from doing an act which is deemed inequitable or unjust.

Installment contract

Purchase of real estate upon an installment basis; upon default, payments are forfeited.

Inter alia

Among other things.

Ipso facto

By the fact itself.

Irrigation district

Quasi-political districts created under special laws to provide for water services to property owners in the district.

Jalousie

A kind of blind or shutter made with slats fixed at an angle.

Joint and several liability

A debt incurred by two or more persons “jointly and severally” whereby one action may be brought against all of the parties or an action may be brought against one party for the entire debt.

Joint tenancy

Property held by two or more persons together with the distinct character of survivorship.

Judgment

Decree of court declaring that one individual is indebted to another and fixing the amount of such indebtedness.

Judgment d. s. b.

D. s. b. is the abbreviation for the Latin *debitum sine brevi*, which means “debt without writ.” It is a judgment confessed by authority of the language in the instrument.

Jumping signs

Replacing a “for sale” sign already upon the property with another “for sale” sign by the offending broker or salesperson.

Junior mortgage

A mortgage second in lien to a previous mortgage.

Laches

Delay or negligence in asserting one’s rights.

Lanai

A porch.

Land contract

A contract for the purchase of real estate upon an installment basis; upon payment of last installment, deed is delivered to purchaser.

Land economics

Branch of the science of economics which deals with the classification, ownership, and utilization of land and buildings erected thereon.

Land/ground lease

An agreement for the use of land; sometimes secured by a building erected on the land by the lessee.

Landlocked

A property having no access to a public road or way, unless trespassing upon another owner’s land.

Landlord

One who rents property to another.

Lands, tenements and hereditaments

A term used in the early English law to express all types of real estate.

Lease

A contract, written or oral, for the possession of lands and tenements on the one hand and a recompense of rent or other income, on the other hand.

Leasehold

An estate in realty held under a lease.

Legal description

A description recognized by law, which is sufficient to locate and identify the property without oral testimony.

Lessee

A person to whom property is rented under a lease.

Lessor

See Landlord.

License

A privilege or right granted by the State to operate as a real estate broker or salesman. An authority to go upon or use another person’s land or property, without possessing any estate therein.

License year

Period specified in license law for license; often different from calendar year.

Lien

A hold or claim which one person has upon property of another as security for a debt or charge; judgments, mortgages, taxes.

Life estate

An estate or interest held during the term of some certain person's life.

Lis Pendens

Suit pending; usually recorded so as to give constructive notice of pending litigation.

Listing

Oral or written employment of broker by owner to sell or lease real estate.

Littoral

Belonging to shore as of sea or Great Lakes; corresponds to riparian rights.

Lock-in mortgage

One without provision for pre-payment, with or without interest; may provide for full interest payment to maturity in order to permit refinancing.

Lot line

A legally defined line dividing one tract of land from another.

Louver

A domed turret with lateral openings in a roof.

M A I (Member, Appraisal Institute)

The highest professional designation awarded by the American Institute of Real Estate Appraisers.

Mansard roof

A roof with two slopes on each of the four sides, the lower steeper than the upper.

Marginal land

Land which has little productivity, due to access, terrain, or blight, until better land is available for economic use.

Market data approach

An appraisal term for estimating the value of a subject property by study of sales of comparable properties.

Market value

The highest price which a buyer, willing but not compelled to buy, would pay, and the lowest a seller, willing but not compelled to sell, would accept.

Marketable title

Such a title as a court would compel a purchaser to accept; it is free from any encumbrances or clouds.

Marshalling

Where a creditor has two or more funds out of which to satisfy a debt, he cannot so elect as to deprive another individual, who has but one fund, of his security.

Mechanic's lien

A species of lien created by statute which exists in favor of persons who have performed work or furnished materials in the erection or repair of a building.

Meeting of minds

A mutual intention of two persons to enter into a contract affecting their legal status based on agreed-upon terms.

Merchantable title

(See Marketable title.)

Messuage

Dwelling house and adjacent land and outbuildings.

Metes and bounds

A description in a deed of the land location, in which the boundaries are defined by directions and distances.

Mill rate

One-tenth of one cent; the measure used to state the property tax rate. That is, a tax rate of one mill on the dollar is the same as a rate of one-tenth of one per cent of the assessed value of the property.

Monument

An artificial or natural landmark, e.g. the Revolutionary oak tree, a stone peg.

Moral turpitude

An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

Moratorium

Emergency act by a legislative body to suspend the legal enforcement of contractual obligations.

Mortgage

A conditional transfer of real property as security for the payment of a debt or the fulfillment of some obligation.

Mortgagee

A person to whom property is conveyed as security for a loan made by such person (the creditor).

Mortgagee in possession

A mortgage creditor who takes over the income from the mortgaged property upon a default on the mortgage by the debtor.

Mortgagor

An owner who conveys his property as security for a loan (the debtor).

Multiple dwelling

A residence structure which accommodates two or more families, such as an apartment house or duplex.

Multiple listing

The arrangement among real estate board or exchange members whereby each broker brings his listings to the attention of the other members so that if a sale results, the commission is divided between the broker bringing the listing and the broker making the sale, with a small percentage going to the board or exchange.

NAR

National Association of Realtors.

Net lease

A lease, under which lessor receives a fixed rental and lessee pays taxes, utilities and all other operating expenses.

Net listing

A price, which must be expressly agreed upon, below which the owner will not sell the property and at which price the broker will not receive a commission; the broker receives the excess over and above the net listing as his commission.

Non-conforming use

Use made of property before zoning which is not in conformity with use in zoning ordinance; usually, permitted to continue.

N.S.F. check

Not sufficient funds check (not honored by bank).

Novation

Substitution of a new agreement for an existing one.

Nudum pactum

"Naked pact"—no contract.

Nunc pro tunc

Now for then; the Court allowing an act to be done after the time it should have been done, with a retroactive effect.

Nuncupative will

An oral will.

Obsolescence

Impairment of desirability and usefulness brought about by physical, economic, fashion or other changes.

Offset statement

Statement by owner of property or owner of lien against property, setting forth the present status of liens against subject property.

Open-end mortgage

A mortgage which, after the principal amount has been reduced by payments, can be increased by the borrower up to the original amount of the mortgage.

Open listing

An oral or general listing.

Option

The right to purchase or lease a property at a certain price for a certain designated period, for which right a consideration is paid.

Overhang

The part of the roof extending beyond the walls, to shade building and cover walls.

Over-improvement

An improvement which is not the highest and best use for the site on which it is placed by reason of excess in size or cost.

Package mortgage

One which includes personal property within the lien of the mortgage.

Partition

A division made of real property among those who own it in undivided shares.

Party wall

A wall erected on the line between two adjoining properties, belonging to different persons, for use of both properties.

Patent

Conveyance of title to government land.

Percentage lease

A lease of property in which the rental is based upon the percentage of the volume of sales made, over a stated minimum amount.

Perch

A unit of land measurement; $16\frac{1}{2}$ feet.

Percolation test

A soil test to determine if soil will take sufficient water seepage for use of a septic tank.

Personalty

All articles or property that are not real estate.

Pi

A symbol (π) designating the ratio of the circumference of a circle to its diameter— $\pi = 3.1416$.

Plat book

A public record of various recorded plans in the municipality or county.

Plottage

Increment in value of a plot of land created by assembling smaller ownerships into one ownership.

Pocket license card

Evidence of licensure, which should be carried by the licensee at all times and presented when requested by any person with whom the licensee is dealing in regard to real estate.

Points

(See Discount.)

Police power

The inherent rights of a government to pass such legislation as may be necessary to protect the public health and safety and/or to promote the general welfare.

Postponement of lien

The subordination of a presently prior lien to a subsequent judgment or mortgage.

Pre-payment penalty

Charge by the lender if loan is paid before it is due.

Prima facie evidence

Evidence considered in law to be sufficient to establish a fact, if not contradicted.

Principal

The employer of an agent; the person who is ordinarily liable primarily.

Principal meridian

A north-south line projected through a prominent landmark established under the Governmental Survey system.

Principal note

The promissory note which is secured by the mortgage or trust deed.

Property

The right or interest which an individual has in lands and chattels to the exclusion of all others.

Prospectus

A printed advertisement for a new enterprise, such as rural property or subdivision.

Public policy

That principle of the law, which holds that no person can lawfully do that which has a tendency to be injurious to the public or against the public good.

Public trustee

A person appointed or required by law to execute a trust.

Purchase money mortgage

A mortgage given by a grantee to the grantor in part payment of the purchase price of real estate.

Quadrangle

A tract of the land in the U.S. Governmental Survey System measuring 24 miles on each side of the square, sometimes referred to as a "check."

Quasi contract

An obligation for a party to do something, which is imposed by law.

Quiet enjoyment

The right of an owner to the use of property without interference of possession.

Quiet title

A court action brought to establish title and to remove a cloud on the title.

Quit claim deed

A deed given when the grantee already has, or claims, complete or partial title to the premises and the grantor has a possible interest that otherwise would constitute a cloud upon the title.

Quit notice

A notice to a tenant to vacate rented property.

Quotient

The number obtained when one quantity is divided by another.

Range

A strip of land six miles wide determined by government survey, running in a north-south direction.

Ratification

Giving approval by act or conduct of something done by another, without authority.

Realtor

A coined word used to designate an active member of a local real estate board affiliated with the National Association of Realtors.

Recovery fund

An assessment paid by real estate licensees to provide a fund to reimburse complainants who have suffered a financial loss due to wrongful acts of licensees.

Redemption

The right of a mortgagor to redeem the property by paying the debt after the expiration date; the right of an owner to reclaim his property after a sale for taxes.

Redlining

A prohibited practice of a lending institution which refuses to grant loans in certain urban districts, especially in areas fast becoming racially integrated.

Reduction certificate

A certificate showing the balance due on a mortgage at the time of closing the sale.

Reformation

An action to correct a mistake in a deed or other instrument.

Release

The relinquishment of some right or benefit to a person who already has some interest in the property.

Release of lien

The discharge of certain property from the lien of a judgment, mortgage, or claim.

Remainder estate

An estate in property created at the same time and by the same instrument as another estate and limited to arise immediately upon the termination of the other estate.

Reproduction cost

Normal cost of exact duplication of a property, as of a certain date.

Res gestae

Attendant facts and circumstances to the issue involved.

Res judicata

A matter judicially decided.

Respondeat superior doctrine

"Let the Master answer." A principal is liable for the wrongful acts of his agent (servant).

Restriction

A device in a deed for controlling the use of land for the benefit of the land.

Restriction covenant

A clause in a deed limiting the use of the property conveyed for a certain period of time.

Reversion

The residue of an estate left to the grantor, to commence after the determination of some particular estate granted out by him.

Rider

A supplemental memorandum in the nature of an amendment, attached to, and made part of, a contract.

Right of way

An easement over another's land—also used to describe strip of land used as a roadbed by a railroad or other public utility for a public purpose.

Riparian

Pertaining to the banks of a river, stream, waterway, and so forth.

Riparian owner

One who owns lands bounding upon a river or water course.

Running with the land (Easement)

An easement which inures to the benefit and advantage of subsequent owners of the land, for which it was originally created.

Sale-leaseback

A method of real estate financing whereby the owner of an industrial or commercial property, who desires capital in his business, will sell the property to an investor, who, in turn, leases it back to the seller for a long term of years, on a *net* rental basis.

Satisfaction piece

An instrument for recording and acknowledging payment of an indebtedness secured by a mortgage.

Section

A section of land established by government survey and containing 640 acres.

Security deposit

Money paid by the lessee to the lessor to insure payment of rent and/or return of the premises in satisfactory condition at end of lease term.

Seizin

Possession of real estate by one entitled thereto.

Separate property

Property owned by a husband or wife which is not community property; acquired by either spouse prior to marriage or by gift or devise after marriage.

Septic tank system

Private sewage disposal section for an individual home.

Servient tenement

The real property, which bears the burden of an easement.

Setback

The distance from curb or other established line, within which no building may be erected.

Severalty ownership

Real property owned by one person only; sole ownership.

Shoreline

The edge of the body of water at ordinary high level.

Siding

Finish covering on exterior walls.

Simple listing

Listing property with a broker for sale or rent other than through exclusive agency or an exclusive right-to-sell contract; an open listing, usually verbal.

Simple proportion

Relationship between four quantities in which the quotient of the first, divided by the second, is equal to that of the third, divided by the fourth; also geometrical proportion—a method for finding the fourth quality in such a relationship when three are given.

Sinking fund

Fund set aside from property which, with accrued interest, will eventually pay for replacement of the improvements.

Sky lease

Lease for a long period of time of space above a piece of real estate; upper stories of a building to be erected by the tenant; upon the termination of lease, the improvement belongs to the lessor.

Special warranty deed

A deed wherein the grantor limits his liability to the grantee to anyone claiming, by, from, through or under him, the grantor.

Specific performance

A remedy in a court of equity compelling the defendant to carry out the terms of the agreement or contract which was executed.

Spot zoning

Occurs when tract in question is singled out for treatment, differing unjustifiably from that of similar surrounding land, thereby creating an island having no relevant differences from its neighbors.

Squatter's rights

Occupancy of land by virtue of long use against the recorded title owner.

Statute of frauds

Requires certain contracts relating to real estate, such as agreements of sale, to be in writing, in order to be enforceable.

Statute of limitations

The law which provides that an action is barred unless suit is brought within the statutory period (in many states—six years).

Straightline depreciation

The setting aside of equal annual amounts “to recapture” the present value of a building within a period of years.

Subdivision

A tract of land divided into lots suitable for home-building purposes.

Subletting

A leasing by a tenant to another, who holds under the tenant.

Subordination clause

A clause in a mortgage or lease, stating that rights of the holder shall be secondary or subordinate to a subsequent encumbrance.

Subpoena

A legal order or writ commanding the named individual to appear and testify in a legal proceedings.

Subpoena duces tecum

A subpoena “to bring with you” certain specified records or writings in the possession of the person named.

Sump pump

An automatic water pump used in basements to raise water to the sewer level.

Surface waters

Diffused storm waters, in contrast to a concentrated flow within a stream.

Surrender

The cancellation of a lease by mutual consent of lessor and lessee.

Survey

The process by which a parcel of land is measured and its area ascertained.

Syndication

A specialized form of partnership venture, structured to produce certain tax shelter and other benefits for passive investors.

t/a

Abbreviation for “trading as.”

Tax

A charge assessed against persons or property for public purposes.

Tax deed

A deed for property sold at public sale by a political subdivision, such as a city, for nonpayment of taxes by the owner.

Tenancy at will

A license to use or occupy lands and tenements at the will of the owner.

Tenancy in common

Form of estate held by two or more persons, each of whom is considered as being possessed of the whole of an undivided part.

Tenant

A person who holds real estate under a lease (lessee).

Tenant at sufferance

One who comes into possession of lands by lawful title and keeps it afterwards without any title at all.

Tenement

Everything of a permanent nature which may be holden.

Termites

Antlike insects which destroy woodwork used in the building.

Terre tenant

One who has the actual possession of land.

Tidelands

The lands over which the tide ebbs and flows; such lands may be developed if it does not conflict with rights of the public.

Tier

A strip of land six miles wide running in an east-west direction, as determined by Government Survey.

Title

Evidence of ownership, which refers to the quality of the estate.

Title by adverse possession

Acquired by occupancy and recognized as against the paper title owner.

Title insurance

A policy of insurance which indemnifies the holder for any loss sustained by reason of defects in the title.

Topography

The contour and slope of land, hills, valleys, streams, etc.

Torrens system

A system of title records provided by state law.

Tort

An actionable wrong.

Township

A territorial subdivision, six miles long, six miles wide, and containing 36 sections, each one mile square.

Trade fixture

An item of personal property upon the premises, as under a commercial lease, in connection with the tenant's business; usually, removable by the tenant at end of lease term.

Trust deed

A form of mortgage by which borrower conveys title to a trustee, who holds title for protection of the lender, as security for the loan debt.

Trustee

A person in whom an estate, interest, or power, in or affecting property, is vested or granted for the benefit of another person.

Trustor

One who deeds his property to a trustee.

Ultra vires act

A contract entered in excess of the corporation's express or implied powers of its charter.

Undue influence

Taking any fraudulent or unfair advantage of another's weakness of mind, distress, or necessity.

Unearned increment

An increase in value of real estate due to no effort on the part of the owner; often due to increase in population.

Unilateral contract

One in which one party makes an express undertaking, without receiving in return any promise of performance from the other.

United States Governmental Survey System

Also known as the Rectangular Survey System; a method of describing or locating real property by reference to the governmental survey.

Unlawful Detainer

The statutory proceedings by which a landlord removes a tenant who holds over after his lease has expired or after his tenancy is terminated by notice or after default in payment of rent or other obligations.

Usury

Charging more than the legal rate of interest for the use of money.

V.A. loan

(See G.I. loan.)

Vara

Spanish term of measurement, being $33\frac{1}{3}$ inches.

Vendee

The purchaser of real estate under an agreement.

Vendor

The seller of real estate, usually referred to as the party of the first part in an agreement of sale.

Waiver

The renunciation, abandonment, or surrender of some claim, right, or privilege.

Warranty deed

One that contains a covenant that the grantor will protect the grantee against any claimant.

Waste

Wilful destruction of any part of the land or improvements, so as to injure or prejudice the estate of a mortgagee, landlord or remainderman.

Water table

Distance from surface of ground to a depth at which natural ground water is found.

Windowsill

The lower or base framing of a window opening.

Without recourse

Words used in endorsing a negotiable instrument to denote that the endorser will not be liable to a future holder, in event of non-payment.

Wrap-around mortgage

A method of refinancing, whereby a mortgage or deed of trust secures a loan, which includes the balance due on an existing mortgage, and the additional amount advanced by the wrap-around mortgagee. The latter makes the payments due on the already existing mortgage.

Writ of execution

A writ which authorizes and directs the proper officer of the court (usually the sheriff) to carry into effect the judgment or decree of the court.

Yield

The annual percentage rate of return on an investment in real estate, stocks or bonds.

Zone

The area set off by a governing body for specific use; such as, residential, commercial, industrial use.

Zoning

An area in a municipality restricted by ordinance for a particular use, such as single family, multiple-family, commercial, or industrial.

Zoning ordinance

Exercise of police power of a municipality in regulating and controlling the character and use of property.

BROKERAGE

IT IS RECOGNIZED that there is economic and social justification for the real estate broker and real estate salesperson in society. However, not everyone may engage in the real estate business.

The abuses that have been practiced in the past by some members of the real estate profession, demonstrate that the justification of the broker exists only when the service that is rendered is efficient, intelligent and honest. Because the broker's relation to the economic mechanism is so delicate and important, and because the social consequences of incompetent or dishonest action on the broker's part are so grave, communities learn sooner or later that they must demand that the broker and salesperson have certain qualifications of education and character. Apropos of this, the late eminent jurist, New York Justice Cardozo, in the case of *Roman v. Lobe*, 243 N.Y. 51, 152 N.E. 461 (1926), has succinctly stated:

The Legislature has a wide discretion in determining whether a business or occupation shall be barred to the dishonest or incompetent [citing cases]. Callings, it is said, there are, so inveterate and basic, so elementary and innocent, that they must be left open to all alike, whether virtuous or vicious. If this be assumed, that of broker is not one of them. The intrinsic nature of the business combines with practice and tradition to attest the need of regulation. The real estate broker is brought by his calling into a relation of trust and confidence. Constant are the opportunities by concealment and collusion to extract illicit gains. We know from our judicial records that the opportunities have not been lost. With temptation so aggressive, the dishonest or untrustworthy may not reasonably complain if they are told to stand aside. Less obtrusive, but not negligible, are the perils of incompetence . . . The broker should know his duty. To that end, he should have "a general and fair understanding of the obligations between principal and agent." . . . Disloyalty may have its origin in ignorance as well as fraud. He should know, as the Legislature has said. . . what is meant by a deed or a lease or a mortgage. . .

. . . We hold that the Legislature acts within its lawful powers when it establishes a system of licenses for real estate brokers with annual renewals.

Thus, the need has translated itself into regulation by law. One by one, states and provinces have adopted statutes aimed at regulating the business. The technique used to accomplish the regulation is a system of licensing. The cornerstones are good repute and competency. A high standard of conduct is required.

In organized real estate circles, the real estate broker and real estate salesperson are considered professionals, in the full sense of the word. If such a person is a member of the National Association of Realtors, or the National Association of Real Estate Brokers, Inc., he or she is required to adhere to a rigid code of ethics in dealings with the public and fellow members. Many provisions of the code of ethics are also incorporated into the grounds for suspension or revocation of license, in the license law.

While there are many segments to the real estate business, most brokers concentrate their activities on real estate brokerage. It may be said that brokerage is the heart of the real estate business.

If a real estate broker is to discharge creditably the duties which devolve upon him or her, it is essential that such person have full knowledge of the laws applicable to real estate practice. Real estate brokerage represents a combination of the principles of the law of principal and agent, and the law of contracts. A real estate broker is an agent in the fullest sense of the word, in that he represents another (the owner) from whom he has derived his authority. The interests of three persons are involved in a real estate transaction: the owner, the broker and the purchaser, with whom the broker negotiates in the interests of the owner.

Two contracts are involved relating to the broker's activities. The first is the contract of employment between the broker and the owner; the second is the contract of sale between the owner and the buyer (or lessee), which the broker negotiates as agent for the owner. The contract between the owner and broker is known as the listing contract. It spells out upon what terms a sale, or lease, is to be negotiated by the broker, duration of the contract, and compensation to be paid by the owner to the broker for his services, if he performs his contract. The compensation due the broker is called a commission. Just as an agreement of sale dictates the terms of the deed, so the listing contract, to a certain extent, may dictate the terms of the sales contract.

When the broker obtains a qualified buyer upon the seller's terms, as specified in the listing contract, the broker is entitled to the agreed-upon commission. This is true even though the owner has changed his mind about selling, or arbitrarily refuses to sign the contract of sale. The broker may sue the owner, because the broker has fully performed the contract of employment.

The law is well settled that in order to be entitled to a commission, the broker has to produce a buyer ready, willing and able to purchase the property on the terms and conditions specified by the seller: *Bell et al. v. Warren Development Corp.*, 319 A. 2d 299 (N.H. 1974).

Where the agreement of sale provides that the broker is not entitled to a commission until a certain condition is performed, that particular condition must be satisfied. This principle of law applies to oral as well as written brokerage contracts: *Dixon v. Andrew Tile and Mfg. Corp.*, 357 A. 2d 667 (Pa. 1976).

There are many real estate activities performed by a broker or salesperson other than negotiating the sale of residences, acreage, farms, commercial or industrial properties. Each activity, such as leasing or management, is predicated upon a contract of employment between the principal (owner) and the agent (broker), and it must be examined to determine the respective rights, duties and liabilities of the respective parties. It is important that the contract of employment express clearly the intention of the parties.

The listing contract should be free of ambiguity as to its meaning and intent. Should a controversy arise between owner and broker and it becomes necessary for the latter to prosecute a claim for commission in a court of law, the affirmative burden of proof is upon the plaintiff broker to prove (1) that he or she was properly licensed, (2) that the broker had a contract of employment from the owner, and (3) that he (or she) was the efficient and procuring cause of the sale or lease.

Every state, the District of Columbia, the Canadian provinces, the Virgin Islands and Guam now have license laws. The plaintiff broker must assert and prove licensure as a prerequisite to a recovery. It cannot be assumed.

A broker licensed in New York, but not licensed in New Jersey, obtained a listing in New York City for a property in Newark, New Jersey. The broker sent a New York prospect to view the property. Shortly thereafter the prospect signed an agreement of sale in New York City for the subject property. The seller refused to pay a commission and the broker sued the owner in New York City. The Court held that the broker could recover so long as he did not conduct any negotiations in New Jersey: *Sutton v. Transcontinental*, 222 N.Y.S. 2d. 778 (1961)

In the case of *Smirlock v. Potomac Development Corp.*, 200 A. 2d 922 (Md. 1964), a broker licensed in New York, but not licensed in Maryland, brought an action for commission. The Maryland license law includes in the definition of a real estate broker that any person who engages in any single real estate act or transaction, for compensation, must be licensed as a broker. The claim for a commission was refused. The Court pointed out that if the plaintiff had obtained a power of attorney, he would have been protected, since the act exempts a person holding a power of attorney, "where only one such transaction is involved."

A number of state license laws provide that the broker must be licensed at the time the cause of action arose. The phrase "time the cause of action arose" has been controversial.

In the case of *Kemmerer v. Roscher*, 100 N.W. 2d 314 (Wis. 1960), an exclusive listing was given "To Freeman F. Kemmerer and/or Fontana Realty Company, Inc., Broker" for a one-year period. At the time the listing was obtained, Kemmerer, the individual, was licensed, but Fontana Realty Company, the Corporation, was not licensed. The property was sold during the one-year period through another broker. At the time the Agreements of Sale were signed, the corporation was licensed. In a suit for commission, the court denied a recovery, citing an earlier case, *Payne v. Volkman*, 183 Wis. 412, 198 N.W. 438 (1924), where an action was begun by two associated brokers, one of them licensed, the other unlicensed. The court held that "the contract being invalid as to the unlicensed broker, the contract is invalid *in toto*."

The case of *Rosenthal et al. v. Art Metals, Inc., et al.*, 101 N.J. Super. 156 (1968) involves the provision in the New Jersey license law similar to the Wisconsin law prohibiting a suit unless the broker was licensed "at the time the alleged cause of action arose." The plaintiff was licensed in New York, but not in New Jersey, at the time the listing was obtained. He did obtain a New Jersey license prior to the signing of the agreements of sale. The Appellate Court decided against the broker, since negotiations were carried on in New Jersey before he obtained a New Jersey license. Upon appeal, the Supreme Court affirmed. To the same effect is the case of *Certified Realty Co. v. Reddick*, 456 P. 2d 502 (Oregon 1969).

The New York court, in *Bendell v. Dominicus*, 167 N.E. 452 (1929), construed the same clause and its decision was of a similar tenor. The court stated succinctly:

Otherwise an unlicensed broker might negotiate sales with impunity up to the point of a complete agreement and then obtain his license for the purpose of recovering his commissions on the execution of a formal contract. The law is not so toothless.

The United States Circuit Court of Appeals took an opposite view involving a similar issue. In the case of *Schreibman v. L.I. Combs and Sons, Inc., et al.*, 377 F. 2d 410 (1964), the plaintiff broker, licensed in New York, obtained a license in Indiana, after he secured a listing in Indiana. He was licensed at the time the agreements of sale were signed between the owner and the buyer, procured by him. The Federal Circuit Court of Appeals held that since the plaintiff was licensed *at the time the cause of action arose* (when the agreements were signed), the District Court was in

error in dismissing the suit. The case was returned to the District Court for hearing on its merits. The California courts have had occasion to examine their statute which is of identical import. In earlier cases of *Houston v. Williams*, 200 P. 55, *Davis v. Chapman*, 282 P. 992, *Wise v. Radis*, 242 P. 90, citing the California cases as authoritative, the Iowa Supreme Court, in *Pound v. Brown*, 140 N.W. 2d 183 (1966) also decided in favor of the broker.

In this connection, the language of the Illinois license law requires a plaintiff broker to be licensed

prior to the time of offering to perform any such act or service or procuring any promise or contract for the payment of compensation for any such contemplated act or service.

It is important that a broker or salesman renew his license promptly so as not to prejudice a claim for commission. The law charges the broker with knowledge whether or not his salesperson is properly licensed. A broker endangers his right to a commission where he employs an unlicensed salesperson who embarks upon a real estate deal before obtaining the necessary license. This is true even though application has been made and the examination taken. It is immaterial that the salesperson obtains a license prior to the consummation of the transaction: *Certified Realty Co. v. Reddick*, 456 P. 2d 502 (Or. 1969).

In short, an applicant for license is not legally qualified to engage actively in the real estate business until the license has actually been issued.

In an Arizona case, *Farragut Baggage and Transfer Co. v. Sharon Realty Inc.*, 501 P. 2d 88 (1972), the Court of Appeals reversed a \$3,500 verdict in favor of the broker, where a salesman was licensed by another broker on February 4, 1970. This connection was severed on March 16, 1970 and a salesman's license was issued in the employ of the plaintiff broker on June 15, 1970. Lease negotiations were carried by the salesman, occurring in the latter part of March 1970, or early in April 1970. Negotiations continued until June 29, 1970, when a formal lease was executed. The salesman had made application to the Real Estate Department for transfer of license on March 17, 1970, but the request was not accompanied by the transfer fee of \$5.00. The fee was subsequently received on June 15, 1970 and the license was issued. Accordingly, the salesman was not licensed from March 16, 1970 until June 15, 1970 while negotiations were conducted. The court held that a plaintiff cannot recover where his cause of action cannot be established without showing that he had broken the law.

In the California case of *Firpo v. Murphy*, 236 P. 968 (1925), a similar factual situation was presented and the court held that a broker who employed an unlicensed salesman could not recover a commission for securing leases of a building through such salesman.

Fee splitting between brokers

Air travel has brought distant cities together in a matter of hours. It has multiplied the number of real estate transactions negotiated by two brokers whose offices are miles apart. In associating with a real estate broker from another state, the licensee should make certain that the other broker is properly licensed in his home state and is eligible to cooperate.

The licensee should examine the license law and the Rules and Regulations in his own state to ascertain whether he can share his commission legally with the non-resident broker. Apropos of the matter is the case of *Wheaton v. Ramsey*, 436 P. 2d 248 (Idaho) (1968). Ramsey was a licensed broker in Montana; Wheaton was licensed in South Dakota. At the time of the suit for a share in the commission, Ram-

sey was a resident of Idaho and for that reason, suit was brought in that state. In late 1963, Wheaton, appellant, contacted defendant, Ramsey, concerning her ranch listings in Montana and obtained from her information concerning the Goat Mountain Ranch. The parties discussed the possible joint sale of the property and agreed that in such event, they would split the real estate commission. In October 1963, appellant traveled to Montana with prospective purchasers, Mr. and Mrs. O. W. McPherson, and spent several days showing them the ranch. In December 1963, the McPhersons agreed with the defendant to purchase the ranch for \$275,000. Upon completion of the sale in January 1964, the defendant received a five per cent commission of \$13,750. Ramsey refused to pay to appellant any share of the commission on the ground that her own Montana real estate license would be jeopardized, since Wheaton was not licensed in Montana. The Court said:

The principal issue is whether by Montana law the understanding between appellant and respondent Ramsey constituted an illegal agreement, inasmuch as appellant was unlicensed in Montana, so that such agreement cannot now be enforced. Both parties concur that an agreement between real estate brokers to share a commission is not within the statute of frauds and may be made orally. *Reilly v. Maw*, 146 Mont. 145 (1945), *Iusi v. Chase*, 169 Cal. App. 2d 83 (1959).

The controlling statute is Montana's Real Estate Licensing Act of 1963. . . . It provides that ". . . it is unlawful for any licensed broker to employ or compensate directly or indirectly any person for performing any of the acts regulated by this Act, who is not a licensed broker or licensed salesman; provided, however, *that a licensed broker may pay a commission to a licensed broker of another state so long as such non-resident broker has not conducted and does not conduct in this state any service for which a fee, compensation or commission is paid.* . . ." (emphasis supplied)

The statute is dispositive of appellant's complaint; it would be unlawful for respondent Ramsey to compensate appellant directly or indirectly pursuant to the fee-splitting arrangement. The agreement, therefore, is unenforceable.

In the case of *Thorpe v. Ross J. Carte*, 250 A. 2d 618 (Md. 1969), a broker was to receive a commission of six per cent. He orally agreed with an unlicensed engineering and surveying firm, which assisted in finding a buyer, to share his commission. There was an agreement that the seller, rather than the broker, would pay a part of the commission to the engineering firm. The court held that the contract was illegal and that the broker could not recover anything. The court said:

We see the effect of this contract to be the same as if Carte (the broker) had received the commission and then himself split it. What one does by another he does himself and the intents and purposes of (the law) could not be effectuated if a broker could do by manifestly obvious indirection what he is forbidden to do directly.

The case of *Sherman v. Bratton*, 497 S.W. 2d 316 (Tex. App. 1973), involved a situation where the plaintiff, licensed as a broker, as an attorney, and as an engineer, sued for a commission in the leasing of a property in Dallas. The broker's contract of employment with the owner was verbal. Since the broker was not employed in the capacity of attorney or engineer, but was employed as a broker, and the other professional services being only incidental to his employment, he could not recover in his suit for commission because the Texas law requires a broker's employment to be in writing.

The case of *Quickshops of Mississippi, Inc. v. J. Bruce*, 232 So. 2d 351 (1970) presents an everyday question as to whether an unlicensed broker is entitled to recover

commission on a business opportunity property, where real estate, although significant, was not the dominant factor in the transaction. This presents a factual question for determination by a jury. The court sustained the verdict of the jury in favor of the broker.

The opinion of the Mississippi Supreme Court emphasizes the fact that the license law statute is penal in nature and must be strictly construed. The court referred to the New York rule (*Weingast v. Rialto Pastry Shop*, 152 N.E. 693 New York 1926), which holds that a broker may recover a commission in the sale of a going business "despite the fact that real estate forms an incident of the transaction and he does not hold a real estate broker's license."

Where the broker was employed to sell a business, and charged a commission of 10% for sale of business *and* real estate, he could not collect for sale of the real estate since he was not licensed as a real estate broker: *Rockmatt Corp. v. Ehrlich*, 294 So. 2d, 412 (Fla. 1974).

However, in the California case of *Abrams v. Guston*, 243 P. 2d 109 (1952), where the sale of the realty and the personal property located thereon constituted one complete and entire transaction, it being evident that the mill and machinery located on the leased property were of value to the purchaser only if he obtained the lease upon the property, the court held that the broker making the deal required a license. This case differs from *Marks v. McCarty*, 205 P. 2d 1025 (Cal. 1949), where the real estate and the personal property were each given a separate sales price in the escrow. An unlicensed person was denied a commission in the sale of a restaurant, including stock, fixtures, lease and good will, on the grounds that the sale involved an interest in real estate, as a matter of law: *Cohen v. Scola*, 80 A. 2d 643 (N.J. 1951).

The case of *Hanks v. Hamilton*, 339 So. 2d 1123 (Fla. 1976) should be noted. It was a suit by an unlicensed real estate salesman against a firm of brokers for a share of a \$134,310 commission. The parties agreed in writing "that contingent upon the consummation of the sale of said property, resulting in the brokers receiving said commission, *it would be delivered to a closing agent, from which appellant would be paid \$44,000 for 'services rendered.'*" (our emphasis) The Appellate Court said:

Said agreements resulted in "fee splitting" with unregistered people in the real estate profession. This is absolutely unlawful and the establishment of a "fund" out of the commissions earned by a broker appears to be a device to split the fee and circumvent the law. This is the very thing that the law is trying to avoid.

When one real estate broker invites another broker to show property listed with him for sale and asks him for help in selling it and the second broker then sells it and collects the full commission, the first broker is entitled to a share of the commission. The second broker owes the first broker a duty of good faith and cannot place his interests ahead of the first broker: *Wheeler v. Waller*, 197 N.E. 2d 585 (Iowa 1972).

An agreement to divide a commission between two licensed brokers may be verbal: *J. A. Carter & Associates, Inc. v. Devore*, 281 So. 2d 245 (Fla. App. 1973). Nor does the Statute of Frauds apply to the employment contract between broker and salesperson. It may be verbal: *Fowler v. Taylor*, 554 P. 2d 205 (Utah 1976).

Where one broker sues another broker for a share of commissions after an agreement between them to that effect, the issue is not who was the "efficient producing cause" of such sale, but rather what were the terms of the agreement between the parties regarding the division of commissions earned. In the absence of an express contractual provision to the contrary, the commissions are to be shared equally,

even though only one of the brokers did the major portion of the work: *De Benedictis v. Gerechhoff*, 339 A. 2d 225 (N.J. App. 1975). In the *De Benedictis* case the salesman's employment with the defendant was terminated on May 24, 1971. On April 27, 1971, he had arranged negotiations for the sale of certain restaurant property with a Mr. Zweben, a prospective purchaser. The quoted price was \$850,000. The prospect offered \$600,000. In the latter part of August 1971, the defendant negotiated further with Zweben, resulting in a sale at \$625,000. The trial judge found that "if plaintiff had not brought the parties together originally, the deal would never have been consummated," and awarded judgment to the plaintiff for 50% of the commissions. The Appellate Court remanded the case to determine whether the salesman-plaintiff action rested against the individual broker or the brokerage agency, of which corporation defendant was the president; and, also *what* was the contract between them.

A "finder's fee"

A finder's fee commonly refers to the payment of a commission to a broker for obtaining a mortgage for a buyer. It may also refer to a person who acts as a go-between to an owner and a purchaser, and receives a fee from the owner. In the latter capacity, a "finder" plays a very limited role, with minimal duties in a real estate transaction. He is, in a sense, an "originator" in the deal. A "finder" is one who finds, interests, introduces and brings together parties in a deal, even though he has no part in negotiating the terms of the transaction: *Consolidated Oil & Gas, Inc. v. Roberts*, 425 P. 2d 282 (Colo. 1967); *Shoenfeld v. Silver Springs*, U.S. Dist. Ct. Eastern Division (Wisc. 1971); *Brakhage v. Georgetown Associates, Inc.*, 523 P. 2d 145 (Colo. App. 1974).

Court decisions are not in harmony in adopting a line of demarcation between what constitutes a person a finder and when the activities fall within the definition of a real estate broker under the license law. Suppose Adams, a good friend of Costello, meets him at their country club and Adams learns that Costello wants to sell his home for \$65,000. Adams tells him that he thinks he knows some one who would be interested at that price. Costello replies, "Send him over, and if he buys the property I will pay you \$5,000." Adams sends Chase to Costello, and Chase buys the property at \$65,000. Upon the facts stated, it would appear that Adams could recover the \$5,000 as a finder's fee, even though he has no license.

A finder's fee was denied by the court to an unlicensed person in the sale of a hotel, since real estate was a dominant feature of the transaction: *Sorice v. DuBois et al.*, 167 N.Y.S. 2d 227 (1966); *Cary v. Borden Co.*, 386 P. 2d 585 (Colo. 1963).

In the California case of *Sullivan v. Collins*, 435 F. 2d 1128 (1970), where the plaintiff did considerably more than introduce the prospect to the owner, the United States Court of Appeals affirmed a verdict of \$55,000 as a finder's fee in favor of the plaintiff, an IBM operator and a musician. The Court said:

... what plaintiff did in addition to bringing the buyer and seller together was out of a spirit of helpfulness and not with the expectation or purpose of additional reward. These activities, if they affected the transaction at all, were purely incidental.

A person who sells stock in a corporation that owns and sells real estate cannot recover a finder's fee if he was not a licensed real estate broker: *Brakhage v. Georgetown Associates*, 523 P. 2d 145 (Colo. App. 1974).

When a suit for a commission on a real estate sale, filed by an unlicensed person, stated that the amount sought was an "incentive" or bonus payment, the court de-

nied a recovery, since the plaintiff was not licensed in Louisiana: *Parr v. Asaff*, 322 So. 313 (La. App. 1975).

In *Evans v. Riverside International Raceway*, 237 Cal. App. 2d 666 (1965), the court states the distinction between finder and broker, to be:

The services performed by finders may vary from case to case, but their distinction from the status of a broker lies in their bringing the parties together, with no involvement on their part, in negotiating the price or any other terms of the transaction.

“Regular employees” exempt from licensure

Many state license laws include regular employees of an owner as exempt from the license law requirement. In the case of *Brown v. Haverfield*, 557 P. 2d, 233 (Or. 1976), the defendant was engaged in extensive livestock and ranching operations in Oregon and Idaho. One of the ranches owned by the defendant was the Big Muddy Ranch, in Oregon. In December 1972, it was agreed that plaintiff would assist the defendant in locating cattle and other activities. Compensation was set at \$50 per day, and it was anticipated that plaintiff would work 10 to 15 days each month. Defendant told the plaintiff that if the plaintiff found a buyer for Muddy Ranch, he would pay him “a darn good bonus.” Compensation was to be \$100,000 if the ranch sold for \$42.50 per acre, and \$50,000 if sold for \$40 per acre. Plaintiff, in longhand, wrote the substance of the agreement, describing the compensation as a “finder’s fee.” Both parties signed and notarized the writing. The plaintiff, in late January 1973, contacted a friend, Doan, an employee of J. R. Simplot, to see if the latter might purchase the ranch. On March 19, 1973, defendant instructed plaintiff to “get after that Doan, and see if you can’t get something going on this thing.” Upon plaintiff’s urging, Doan spoke with Simplot, and a few weeks later one-half of the ranch was sold to a corporation controlled by Simplot. In 1974 the remainder acreage was sold in the same manner.

In support of his contention that he was a regular employee, the court found that considering the various duties which the plaintiff performed for the defendant and the compensation paid for them, the plaintiff was a regular employee within the contemplation of the Act and did not require a license in order to be paid compensation for the sale of the Big Muddy Ranch.

Referrals rental listing agency operation

Some rental firms have been the subject of litigation by real estate licensing commissions on the grounds of operating as brokers without a license. Apparently, the agency does not enter into any agreement with the owner or with a prospective tenant; it simply makes available to the prospect a list of rental properties. The agency receives only an initial fee, often in the amount of \$20.

In the case of *Real Estate Commission v. Phares (Homefinders)*, 268 Md. 344 (1973), the Maryland Court of Appeals decided against the Real Estate Commission. The Maryland Legislature then amended the license law to include in the definition of a real estate broker “any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining for purchase or lease any residential real estate.”

In a 1974 suit (Civil 73-701-T), the United States District Court of Maryland dismissed the suit of Ron Phares, t/a Homefinders, against the Real Estate Commission in Maryland, which sought an injunction against the Commission from enforcing the Act against them. The court held that the subject amendment bears a rational relationship to legitimate state objectives and that the law does not deny

the plaintiff equal protection or due process. Contra is the case of *North Carolina Real Estate Licensing Board v. Rentex*, 228 S.E. 2d 493 (N.C. App. 1976), in which the Court of Appeals held that the licensing Act was in derogation of the Constitution, which guarantees the right to pursue ordinary and simple occupations free from governmental regulation: *State v. Warren*, 114 S.E. 2d 660 (N.C. 1960).

In the case of *Minnesota, etc., v. Beslanowitch*, d/b/a Rental Directory, the Supreme Court held that the licensing statute does not contemplate persons who merely compile and publish information about rental vacancies in a general manner. A dissenting opinion of three justices, quoting the New Jersey Real Estate Commission, said, "The possibility of fraud, misinterpretation and sharp or unconscionable practices is great in the rental referral agency field."

A salesperson's right to a commission

The employment of a salesperson by a broker should be in writing signed by both parties. Some employment contracts provide that if a salesperson is discharged or resigns, he shall not engage in real estate activity as a broker, or as a broker or salesperson for another broker, within a certain area of the first broker's office or branch office, for a certain period of time. If such restraint of trade is reasonable, *as to area and time*, it will be upheld.

The situation frequently arises where a salesperson leaves a broker's employ after working on a deal with a prospect, and a sale results subsequently, to that prospect. Is the salesperson entitled to a commission? The question depends upon the particular facts in the case. Pertinent facts would include the extent of the salesperson's activities in the transaction—was the deal "alive," and how long after the salesperson's departure were the agreements signed: *Clair v. Kall and Kall, Inc.* N.Y. Misc. 2d (1960). Clearly, if the agreements were signed before the salesperson left the broker's employ, but consummation occurred subsequent to his severance of employment, the salesperson would be entitled to a commission.

Sometimes partners in a real estate firm agree to disagree and dissolve the firm. What happens in regard to commissions earned upon deals they were working on before the firm broke up? Here again, each case necessarily depends upon its particular facts. However, the case of *Pitt v. Kent*, 179 A. 2d 626 (Conn. 1962) is illustrative of many similar situations. Pitt and Kent were partners in the real estate business. They were negotiating the sale of a large tract of land to Blitz and Price, but they could not obtain financing. Later, the real estate partnership was dissolved, but they agreed that if Blitz and Price bought the property, each would share equally in the commission. An attorney obtained a group of investors to purchase the property, and later conveyed the property to Blitz and Price, at a profit.

The Court held that Pitt could recover one-half of the commission, as the transaction could be traced to Blitz and Price's original interest.

Another situation develops where a salesperson's employer refuses to sue an owner, and the salesperson sues. In the case of *Turnblazer v. Smith*, 379 S.W. 2d 772 (Tenn. 1964), the Supreme Court refused a recovery. It said:

The real estate salesman works merely for and under the control of the real estate broker and he is "engaged by and on behalf of a licensed real estate broker." Therefore, he works for the broker and does his bidding and is under his control. He does not perform services for others for which he may claim commission.

Employment

Employment is an important prerequisite to the recovery of a commission in a court of law. The cases are legion where a broker was unsuccessful in recovering a commission because he could not prove a contract of employment. It is regrettable that the law in every state does not require a broker's employment to be in writing. At the present time, 22 states do require a broker's employment to be in writing (Arizona, California, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Texas, Utah, Washington, and Wisconsin—also the District of Columbia and the Province of Ontario). Georgia requires exclusive listings to be in writing. These states also require a definite expiration date in exclusive listings contracts. A number of states require a definite expiration date by rule and regulation of the Commission. A written listing eliminates misunderstanding and curtails litigation. In the long run, it inures to the benefit of the licensee because it is strong evidence of employment.

The written listing also protects property owners from fraudulent and fictitious claims for commissions. It does not apply to oral agreement between broker and another broker, salesperson or agent, to share commission: *Fowler v. Taylor*, 554 P. 2d 205 (Utah 1976).

The case of *Sherman v. Bratton*, 497 S.W. 2d (Tex. App. 1973), involved a situation where the plaintiff, licensed as a broker, as an attorney, and as an engineer, sued for a commission in the leasing of a property in Dallas. The broker's contract of employment with the owner was verbal. Since the broker was not employed in the capacity of attorney or engineer, but was employed as a broker, and the other professional services being only incidental to his employment, he could not recover in his suit for commission because the Texas law requires a broker's employment to be in writing.

Where the law requires the listing to be in writing, it should contain a description of the property, terms of the sale, the negotiated amount or percentage of commission to be paid, the expiration date and signature by the party to be charged.

In states where an oral listing is valid, many owners are full of curiosity; in an active market, they may be just curious to see what they could get for their property or they entertain a half-hearted idea that they want to sell it. If a buyer is obtained, they then have a change of mind. In a suit, there is a complete variance as to the facts; whereas, if there were a written employment the writing would speak for itself. In the Missouri case of *Windsor v. International Life Ins. Co.*, 29 S.W. 2d 1112 (1930), where a broker, unsolicited, visited defendant corporation and offered to exchange a business building for farm lands, an officer of the defendant said he was not interested, but would be interested in exchanging farm lands for high class apartment properties. The broker said he would see what he could do. Nothing was said about commission. Later, the broker sued for a commission. Court held that there was no employment, so no recovery.

A corporation advertised its plant for sale in the *Wall Street Journal* and named its vice-president as the person to be contacted. A broker produced a prospect and the vice-president told him to prepare a contract of sale. The corporation then claimed that the vice-president had no authority to act. In a suit, the Court decided in favor of the broker, since the act committed was within the apparent scope of

that officer's authority. The advertisement named him as the contact: *Simon v. Porter*, 180 A. 2d 227 (Pa. 1962).

The general manager of a corporation has implied and ostensible power to do those things that are usual or necessary in ordinary transactions of corporate business. A commission was recovered based upon negotiations between broker and general manager: *Tierney v. American Urban Corporation*, 365 A. 2d 1153 (Conn. 1976).

In the case of *Yurgelin v. Emery*, 282 Mass. 571 (1933), the Court held that a single inquiry by the owner as to the amount of commission a broker would charge was insufficient to warrant a finding that the owner expressly or impliedly contracted with the broker to find a purchaser.

A writing authorizing an agent to sell "property described on the reverse side of this card," was held sufficiently signed where the owner's signature appeared at the end of the face side of card: *Kelley v. J. R. Rice Realty Co.*, 235 Ky. 643 (1930).

In the case of *Svoboda v. De Wald*, 159 Neb. 594 (1955) the court held that the broker's name on the agreement of sale constituted a written listing.

A sign on a property reading "SEE YOUR BROKER" does not create employment. The Pennsylvania Superior Court so held in the case of Appeal of *Lancaster Farmers National Bank*, 219 A. 2d 647 (1966), reversing an award in favor of a broker by a lower court. The testimony tended to show that appellee (broker) had no specific contract to sell and that he was never contacted by the appellant (seller) and given authority to sell the subject property. The broker contacted the bank to ascertain whether the particular property was available *after* he learned that the Millers were interested in purchasing it. The bank had placed a sign on the property indicating that it was for sale and directing interested parties *to contact their brokers*. The plaintiff broker had previously dealt with the bank, having sold a property for it and having received a commission in the sale. The Court said:

The fact that a broker has previously made a sale and received a commission does not entitle him to a commission on a subsequent sale made by him for the same vendor, if he has not been employed to effect that sale. Thus, the previous transaction, not being sufficiently probative in itself to create a subsequent agency, did not entitle appellee to a commission. Neither was the sign directing prospective purchasers to contact their brokers an offer of employment. In *Lanard and Axilbund v. Thomson Printing Co.*, 84 Pa. Super. 199 (1924), defendant notified approximately one hundred real estate brokers by postal card that it had property to rent. The Superior Court there held that: "The postal card amounted to no more than a notice that defendant had a property to rent. It did not authorize plaintiffs to secure a tenant." The sign in the instant case also was nothing more than a notice that the property was available. It created no agency.

A case in the same area of law, in which one broker sued another broker successfully, is the case of *Levit v. Bowers*, 2 Ill. App. 2d 343 (1954). In that case, the defendant, a Realtor, held an exclusive agency for the sale of a large plot of ground in Chicago. In June 1949, he mailed a letter to about one thousand real estate brokers in the Chicago Loop, offering to pay a full commission to a broker who "successfully negotiates a sale" of all or a portion of the property. The plaintiff broker recovered a verdict for \$4,200 and the defendant broker appealed.

It was the defendant's contention that the words "successfully negotiating sale" meant that no commission would be paid unless the sale was consummated. In regard to the meaning of the words in controversy, the Court said:

The letter in question was prepared and signed by a Realtor and sent to one thousand real estate brokers—men who make their living as agents for buyers and sellers of real estate. The

final transfer was beyond their control. . . . If a sale had to be consummated before the broker was entitled to his commission, then the solicitation by the defendant of the services of a thousand Realtors in the Chicago Loop was hardly more than a snare and a delusion. . . . The property being vacant and the transaction being for cash (there) was left no matter of substance to be decided.

In the case of *Sackett v. Ford*, 1 Tenn. 506, the court held that where a broker asks an owner the price of his house, and introduces him to a customer who subsequently purchases it, he is not entitled to a commission, unless he was employed by the owner to make the sale, although he may have, to some extent, influenced the sale: *Hunger v. Judy*, 194 Kan. 159 (1965).

In the ordinary situation between owner and broker, where the listing price is given to the broker, the usual interpretation is that the asking terms are intended to merely guide the broker in starting negotiations: *Bonanza Real Estate Co. v. Crouch*, 517 P 2d 1371 (Wash. App. 1974).

No particular form of words is necessary to employ a broker although a mere statement to a broker of the price at which the owner will sell is not, in itself, sufficient to imply a contract of employment. The broker must act with the consent of the principal, whether such consent be given by written instrument, orally, or by implication from the conduct of the parties: *Young v. Zimmer*, 56 (Ill. App. 2d 298 1965).

In Corpus Juris Secundum, 32 Section 12, it is said:

. . . the mere leaving of a description of the property at the office of a broker, by the owner or his agent, with the request that the broker sell the property at a designated price and upon designated terms, amounts to an employment of the broker; but the mere fact that a broker asks and obtains from the owner the price at which he is willing to sell does not of itself establish the relation of principal and agent between them.

It is important that the broker have a definite understanding with the owner *that he will be paid a commission*, if the broker obtains a buyer upon the seller's terms.

A broker's right to recover a commission stands or falls upon terms of offer made by prospective purchaser. If terms proposed vary in any material degree from those specified by the vendor, the broker cannot recover a commission: *Bell v. Warren Development Corporation*, 319 A. 2d 299 (N.H. 1974). A broker is entitled, however, to his commission when he obtains a buyer upon seller's terms, and seller refused to sign the agreement of sale: *Wolfenberger v. Madison*, 357 N.E. 2d 656 (Ill. App. 1976). If a broker negotiated an agreement of sale that was subject to obtaining a mortgage of \$41,000 and the only mortgage obtainable contained a 1½% prepayment penalty, which the buyer refused to accept, the broker could not recover a commission.

In the Kentucky case of *O. L. Hamilton v. Booth*, 332 S.W. 2d 252 (1960), a broker sued for a \$750 commission. The only question involved was whether the contract of sale between the owner and the buyer constituted a *written* contract of employment between the owner and the broker, as required under Kentucky law. The Court said:

This sales agreement between the defendant and the purchaser of his property has no resemblance of a contractual arrangement between the defendant and plaintiff. It recites that the property was sold through Bud's Hamilton Realty Auction Co. (this is a printed form), but these words standing alone are meaningless. If plaintiff was to recover on the basis of this writing, it should show an agreement with him and the terms of the agreement. It fails to show either. The plaintiff, therefore, had no claim based on this writing as a contract.

In the case of *Tucker v. Green*, 96 Ariz. 371 (1964) the court held that the owner's liability to broker for commission on sale owner made directly with prospective purchaser of broker depended on whether the owner had knowledge, *before consummating the sale*, that purchaser had been produced by broker.

A clear statement of the application of employment by implication rule is found in the annotation to *Reeve v. Shoemaker* (Iowa) 205 N.W. 742, 43 A.L.R. 839 reading:

Where a broker approaches an owner of real estate and negotiates for the purchase of certain of his property, no promise to pay for the broker's services voluntarily rendered will be implied if the owner is justified by the circumstances in presuming that the broker is a prospective purchaser or is representing a prospective purchaser in the negotiations.

Similarly, in the case of *Morton v. Barney*, 140 Ill. App. 333 (1908), the court said:

Nor can a broker by letters of his own and addressed to a possible purchaser or by writing an owner that he has offered the property to such proposed purchaser make a contract of employment for himself, entitling him to commission. *It takes two to make a contract of that kind* and an owner is under no obligation to respond to every letter he may receive from a real estate broker he has not employed. (emphasis supplied)

Where a broker has been discussing with an owner the possibility of a sale of his home, but it is uncertain whether the owner has really made up his mind to go ahead with a sale, the broker, in order to protect himself against a loss of time and money, can protect himself, to some extent, by putting the owner on notice that he is employed. A letter, in the following form, might well be used in this connection:

June 15, 1977

Dear Mr. and Mrs. Henry Stone:

In accordance with our conversation today, we are pleased to list your property at 6715 Murray Avenue, Pittsburgh, Pennsylvania, for sale. We will endeavor to obtain a purchaser at your suggested price of \$20,500 and, of course, will expect a commission of 7%.

If you decide at a future date not to sell and to terminate our employment or if you decide to change the selling price, please notify us immediately.

We hope to be able to obtain a purchaser upon your terms and to your complete satisfaction.

Thanking you for this business, we are,

Sincerely Yours,

MODERN REAL ESTATE
COMPANY

By Frank W. Smith

President

Upon receipt of such a notice, the owners, if they do not want to sell, will undoubtedly notify the broker to that effect. If no notice is given and the broker obtains a bonafide buyer and brings suit for a commission, proof of the letter will carry great weight as to employment.

Authority of person listing property

Where the property is listed with the broker by a person who is not the owner, the broker should make careful inquiry as to such person's authority to list the

property. Often a son or daughter of foreign parents, or of persons of little business experience, will do the negotiating with the broker. Should he obtain a buyer upon the terms requested, he may find that the old folks have changed their minds and want to continue in the neighborhood where they have lived for many years. A suit for commission is futile unless the broker can prove that the child was the authorized agent of the parents. Agency is often a difficult burden for a claimant to establish, as the affirmative burden of proof rests upon the plaintiff broker. The broker would have a cause of action against the child, but a judgment would probably be uncollectible.

In the case of *Sylvester v. Johnson*, 110 Tenn. 392 (1903) the defendant's daughter, who generally conducted defendant's affairs, gave the broker the sole agency for the sale of a lot. He placed his "For Sale" sign on it. *This was done with defendant's knowledge, and without objections.* The daughter referred a prospective buyer to the broker, with the statement that the matter was entirely out of her hands, and there was no denial of the existence of the agency. The broker was held to be the defendant's sole agent and he could recover.

Where a broker obtains a listing from a husband and knows that the wife, who is also an owner, will not sign a contract of sale, so that the buyer cannot obtain good title, the broker cannot collect a commission if he obtains a buyer. The marital relationship does not make one spouse the agent for the other, per se. It is important to obtain authority to sell from both parties: *Ginn v. MacAluso*, 310 P. 2d 1034 (N.M. 1957). Where husband and wife own property jointly and they are living separate and apart, a cautious broker will accept a listing signed only by *both* parties.

In the case of *Virginia M. Pepper, appellant, v. J. C. Chatel, appellee*, No. 30561, Municipal Court of Appeals for the District of Columbia (1962), the appellant had inherited certain property prior to her marriage, which she listed with the broker under her maiden name. The broker produced a buyer the next day and a contract was immediately executed by appellant under her maiden name. At settlement, however, appellant's husband refused to join in the conveyance and the sale was not consummated.

Appellant testified that at the time of signing she was unaware that her husband had to join in the conveyance, and that the broker failed to so advise her, although he knew at the time that she was married. The broker testified that he did not learn of her marriage until after the contract was executed. The Court said:

In the case before us appellant testified that she was unaware of the necessity of having her husband join in the conveyance. Nevertheless, we are of the opinion that the evidence supports the conclusion that the broker is entitled to his commission. It is clear from the finding that the broker did not learn appellant was married until after the contract was executed, and that he acted in good faith when he procured a purchaser acceptable to appellant.

In the case of *Cohen v. Garlick*, 344 Mass. 654 (1962), an auctioneer firm was hired by an owner of real estate to sell it at auction. The auctioneer announced in effect that "broker participation" would be "allowed" to a broker representing the successful bidder at the time of his purchase if the broker had registered his "client" with "us," and would be "paid by us after settlement." A broker for the successful bidder had duly registered him on a form stating that if "my client" were the successful bidder "I am to receive" such commission, "payable to me upon settlement." The Court held that the facts did not permit an inference that the owner of the property had authorized the auctioneer firm to bind him to pay such commission nor justify a ruling that the owner was liable to the successful bidder's broker therefor.

In dealing with an officer of a corporation owner, it is important that the broker ascertain whether the officer has the necessary authority to list the property with the broker. The affirmative burden of proof rests upon the broker and it may be difficult to discharge this burden: *Barker v. Great Southern Dev. Co., Inc.*, 249 Miss. 662 (1964). In the Florida case of *McCabe v. Howard*, 281 So. 2d 362 (Fla. App. 1973), the broker had shown the property to an officer of the corporation; the corporation president bought it in his own name. The broker had the affirmative burden to prove the president was acting as agent of the corporation, in order to recover.

In the case of *Lacalusa Inv. Co. v. Hesse*, 273 P. 766 (Cal. 1929), a suit for a commission was brought by a broker against the corporation for breach of a listing contract made with the corporate president. The Court held that the by-laws of the corporation were admissible to show that the president was only authorized to execute instruments in writing, which had first been approved by the directors. No recovery.

Broker is a fiduciary—duty of loyalty

If a real estate broker is to discharge creditably the duties which devolve upon his office, it is necessary that he have a knowledge of certain cardinal and fundamental principles of law which affect the everyday practice of his business. Real estate brokerage represents a combination of the principles of the law of principal and agent and the law of contracts. A real estate broker is an agent in the fullest sense of the word, in that he represents another from whom he has derived his authority. A broker occupies a position of trust and confidence toward his principal, and there are certain important duties that every agent owes to his principal. The first of these is that he must be loyal to his trust. This duty embraces substantially all the others. To be loyal to his trust, an agent cannot so exercise his duties as to garner a profit for himself at the expense of his principal. The courts have decided that in order for a broker to be loyal to his trust he must not sell to himself, purchase for himself, or purchase from himself, unless the owner acquiesces. Where a property is listed with a broker for sale, it is the duty of the broker to determine a fair market value for that property and list it at that price. A broker will not be permitted to purchase a property which has been listed with him for sale where he feels that the list price is below the normal market price and purchases it either in his own name or in the name of another person in trust for himself, and then resells the property at a profit. The reason for this rule is interestingly given in a New Jersey case in which the Court said as follows:

Owing to the greed and selfishness of human nature there must, in the great mass of transactions, be a strong antagonism between the interest of the seller and the buyer, and universal experience shows that the average man, when his interests conflict with his employer's, will not look upon his employer's interests as more important and entitled to more consideration than his own.

In the Missouri case of *Blakeley v. Bradley et al.*, 281 S.W. (2d) 835 (1955) the Supreme Court extended the principle that a broker should not purchase a property listed with him unless this fact is made known to his principal in advance, to include also the broker's employees and their near relatives. *Curroto v. Hammack*, 241 S.W. 2d 897 (Mo. 1951).

A vacant lot in Kansas City, Missouri, was listed with the broker and was sold a few days later to a "straw" party, for the real party in interest, a medical clinic. Three days later, the "straw" party deeded the property to the clinic. In a suit for

commission, these facts being established, a recovery was denied: *King v. Pruitt*, 288 S.W. 2d 923 (1956).

Where a seller employs a broker to sell his property, he bargains for the disinterested skill, diligence and zeal of the broker for his (the seller's) own exclusive benefit: *Yerkie v. Salisbury*, 287 A. 2d 498 (Md. 1972).

In construing loyalty, the courts have held that a real estate broker may not have a secret personal interest in the subject matter of his employment or make a secret profit or become the purchaser of his principal's property, indirectly, unless he discloses to his principal everything within his knowledge which might affect the principal's interests or influence his action in relation to the subject matter of employment: 8 Am. Jur. Secs. 89, 152.

A broker cannot buy from himself or sell to himself, unless he makes full disclosure to the other party: *Batson v. Strehlow*, 305 P. 2d 686 (Cal. App. 1957).

In the case of *Cox v. Bryant*, 347 S.W. 2d 861 (Mo. 1961), a farm was listed with a broker at \$40,000. Cox, a salesman, agreed to buy the farm at the listed price and agreements were signed to that effect. The agreements recognized the Jim Morris Sales Co. as the broker in the deal and the Bryants agreed to pay the broker a 5 per cent commission. The owners refused to go through with the deal and the salesman, Cox, brought suit for specific performance. At the trial of the case, it developed that Cox was to receive 60 per cent of the commission to be paid his broker in the transaction. This fact was fatal to Cox's cause of action. The Court said:

In this case, before Cox could properly become the purchaser, it was his duty to terminate all agency relationships with the Bryants and thus place himself in the character and position of a purchaser.

Among the facts that Cox should have disclosed to the Bryants was the fact that he was to receive a \$1,200 commission for the sale to himself. . .

The case of *Nutter, appellant, v. Becktel*, 433 P. 2d 993 (Ariz. 1967), is of a similar vein.

In the case of *Gallagher-Smith-Feutz Realty, Inc. v. Circle Z. Farm, Inc., et al.*, 545 S.W. 2d 395 (Mo. App. 1976), the Court held that if a broker knows of the existence of a better offer at the time he tried to influence the seller to accept his purchaser, but fails to tell the seller of such offer, he is deemed guilty of a breach of duty, and forfeits any claim for a commission.

The courts throughout this country have likewise adhered strictly to the principle of law that a broker is a fiduciary in the strictest sense of the word and owes a high degree of loyalty to his principal. In the case of *Cochrane v. Wittbold*, 102 N.W. 2d 459 (Mich. 1960), a saleswoman employed by a broker caused her parents to purchase for her land listed for sale with her employer. She collected a commission on the sale, without disclosing identity of true purchasers to seller, and almost immediately resold it to another for a profit. Such conduct, the Court held, was violative of the State Corporation and Securities Commissions rules, prohibiting a broker from purchasing property listed with him, without making full disclosure to listing owner. Such action was also contrary to public policy of the state.

A broker is under a fiduciary duty to disclose to his owner any knowledge he possesses concerning the planned resale of property sold by the owner, unless the owner has knowledge of the agreement, prior to the sale: *Case v. Business Centers, Inc.*, 357 N.E. 2d 47 (Ohio App. 1976).

It was held in *Simone v. McKee*, 298 P. 2d 667 (Cal. 1956) that a broker retained by owner to sell realty owed owner affirmative duty to disclose second offer to

owner, and failure to disclose was equivalent to affirmative representation that no other offer existed.

A broker is bound to disclose *all* offers, even though he, personally may believe the offer is too low and informs the prospect that it would be an insult to submit such an offer to the owner: *E.A. Strout Agency v. Wooster*, 99 A. 2d 689 (Vt. 1955).

This is an *affirmative* duty of the broker to disclose a second offer to purchase, and failure to do so is equivalent to a representation that no other offer exists. Where a broker received a \$17,000 offer upon a property listed with him, which he failed to disclose to the owner, and only disclosed a \$13,000 offer, which the seller was induced to accept, the broker was held liable for the difference in price: *Simone v. McKee*, 298 P. 2d 667 (Cal. App. 1956).

In the case of *Haymes v. Rogers*, 319 P. 2d 339 (Ariz. 1950), the plaintiff, a broker, sued to recover a commission. From a verdict in favor of the broker, the owner appealed. After failing to sell the property at \$9,500, the price originally listed with the broker, he stated to the purchaser his belief that the property could be bought for \$8,500. After sale of property for \$8,500, the broker sued to recover commission. The appellate court held, *as a matter of law*, plaintiff could not recover as there was a breach of fiduciary relationship. Mr. Justice Udall filed a vigorous dissenting opinion, in which he said:

Will not the court's opinion be construed as holding that if a broker states to a purchaser or even indicates in any manner that property might be acquired for less than the listed price his right to a commission is thereby forfeited? If such be the declared law of this state, it will certainly give a wide avenue of escape to unscrupulous realty owners from paying what is justly owed to agents who have been the immediate and efficient cause of the sale of their property.

It would be a most naive purchaser who would not know or assume that the owner of realty might sell for less than the original asking price.

A Louisiana case is squarely opposed: *Wolf v. Casamento*, 185 So. 537 (1939). Other cases are in harmony with the Arizona decision, although other circumstances entered into the case, as where broker acted in his own interest, or withheld information from his principal.

In the case of *Heard, et al. v. Miles*, 32 Tenn. 410 (1949), two real estate brokers claimed a commission. The owner recognized the efforts of Joyner-Heard Realty Co. as the procuring cause, but paid the money into court, since there were two claims. The unsuccessful broker, Marx & Bendorf, Inc., had negotiated three leases on the subject property. This broker also had negotiated several forbearance agreements on an existing mortgage. The last lease contained a *new* clause that a commission would be paid "on any subsequent agreement to sell or exchange, made with or through Lessee." The property was sold to the tenant. No one ever called the owner's attention to the added clause. Although the court pointed out that the broker was not guilty of any fraud, intentional bad faith or unfairness, it could not recover because it was the *duty* of the broker here to disclose to its principal the provision in the renewal lease for the benefit of the broker. The principle of disclosure, the court said, "is one of prevention, not remedial justice, which operates however fair the transaction may have been—however free from every taint of moral wrong."

If the suit had been between the owner-lessor and the lessee, the *prime* parties to the lease, the owner would have been bound by the terms of the lease, whether she read it or understood it. But this was an action by an agent against his principal and the law is far more exacting.

A broker with whom property is listed for sale must reveal to his owner the fact that he is a part purchaser of such property. In real estate parlance, this is where the broker takes "a piece of the action." His failure to do so will defeat his claim for a commission in the sale. In the case of *Thompson v. Hoagland*, 242 A 2d 642 (N.J. 1968), the court said:

The broker was and is looked upon as a fiduciary and is required to exercise fidelity, good faith, and primary devotion to the interests of his principal. . .

It is a corollary of the principle discussed above that failure of the broker to inform the principal that the purchaser is an *alter ego* of the broker or a relative or partner renders the transaction voidable at the option of the principal.

See also *Brotonari v. Rollofo*, 246 N.W. 2d 368 (Mich. App. 1976).

However, where the Court found that the broker had had no interest in the corporation to which the property had been conveyed, the broker could recover his commission on the sale: *Aeschlimann v. Rosbach*, 558 P. 2d 1231 (Or. 1977).

A corporate buyer could not maintain an action for specific performance on a contract that was negotiated by a broker who owned two-thirds of the stock in the corporation, which fact was not disclosed to the seller: *M.S.R., Inc. v. Lish*, 527 P. 2d 912 (Colo. App. 1974).

Where the broker makes full disclosure of his interest, the law does not prevent him from purchasing property listed with him for sale and making a profit. In the case of *Sylvester v. Beck*, 406 Pa. 607 (1962), the plaintiff sued a real estate broker for damages alleging a breach of trust in the purchase and resale of real estate. The plaintiffs won a jury verdict in the amount of \$9,000. The lower court entered judgment in favor of the broker, notwithstanding the verdict. (Judgment N.O.V.) The plaintiffs appealed. The defendant was authorized to sell the property for \$15,000 and he displayed his broker's "for sale" sign on the property. Later the plaintiffs agreed to sell the property to the broker for \$14,000. Within one month, the broker sold the property for \$25,000. A few weeks later, both deals were closed on the same day. Subsequently, when the plaintiffs learned that the defendant had realized a huge profit in a quick resale of the property, they entered suit. The Court said:

The fact that the defendant entered into a contract to resell the property twenty-seven days after he had contracted to purchase it and did not disclose this particular fact to the plaintiffs until after the final settlement does not, in itself, entitle the plaintiffs to damages. The agency having ended when the plaintiffs agreed to sell, the agent was under no obligation to furnish his former principal with the details of events that took place subsequent to the termination of their relationship of principal and agent.

Agent must obey instructions

The second fundamental duty that an agent owes to his principal is that he must obey the instructions that are given him by his principal. If a broker undertakes to judge that he may depart from the instructions of the owner, and that such variation would not be material, he does so at his own peril, and should any loss result by reason of the agent's deviation from his given instructions, he will be personally liable. For example, where a broker is engaged to sell property on a cash basis but instead accepts notes which are later declared invalid, the agent will be held personally responsible for the resulting loss. The owner, however, should be specific in his instructions.

Where vendor informed broker not to return deposit money under certain conditions, and broker returned the deposit money to the buyer, broker was held liable: *Jackson v. Williams*, 510 S.W. 2d 645 (Texas App. 1974).

A broker was held liable, in damages, to his principal, where he reduced the price of the property in effecting an exchange deal without authorization from his owner: *Earle v. Lambert et al.*, 205 Cal. App. 2d 452 (1962).

A real estate broker is a *special* agent with *limited* authority. A broker is employed for the specific purpose of negotiating a sale. When he accomplishes that purpose, his authority as agent ends. He has no authority, once the agreements of sale are signed, to permit the purchaser to take possession of the premises prior to the closing of the deal, or to enter to make repairs or to decorate the premises. If the deal fails to be consummated through no fault of the buyer, the broker could be held personally responsible for the buyer's expense. The Iowa Supreme Court held that a real estate agent who contracted for a new well, and who was not authorized by actual owners to represent them in doing so, was liable for the cost of drilling the new well: *Cryder Well Co. v. Brown, et al.*, 136 N.W. 2d 519 (1965). If a buyer requests some special privilege or consideration, the request should be referred to the owner.

In the absence of a special agreement, it is the principal's judgment and not the agent's, that is to control: *Gallagher v. Jones*, 129 U.S. 195, 9 Ct. 335, 32 L Ed 658, 660; *Quinn v. Phipps*, 113 So. 419.

Where the agent does not exceed his authority, or where his representation to the buyer was only a repetition, in good faith, of a statement authorized by his principal, the agent is not personally liable to the buyer: *Peek v. Meadors*, 500 S.W. 2d 333 (Ark. 1973).

Agent must not be negligent

A broker should apprise the owner of all offers received, even though the offer to the broker may seem unworthy of acceptance: *E. A. Strout Realty Agency, Inc. v. Wooster*, 99 A 2d 689 (Vt. 1955). A regulation of the California Real Estate Commissioner provided, in substance, that "a check being held in an uncashed form must be specifically disclosed to the seller or offeree before he accepts the offer." A salesman received a deposit check of \$5,000 on a five-acre tract. The check remained in the office safe for four months while negotiations continued. Finally, the salesman began to lose faith in the buyer and discussed his fears with the broker. The buyer was asked to issue a new check or authorize presentation of the original check to the bank. He refused and it was learned that he had closed his account and that at no time did the buyer have funds on deposit to cover the check. The Commissioner ordered a suspension of the broker's license for negligence in the matter.

An attorney failing to disclose an encumbrance of record against a property which his principal is purchasing will be personally responsible to his principal for any damages sustained by the latter.

The law is well settled that if a broker knows of any defect in the owner's title at the time he accepts a listing, or is aware of facts sufficient to put a reasonably prudent person on inquiry, he cannot collect a commission if the sale fails because of such defect: *Dail Realty v. Vodicka*, 237 N.W. 2d 7 (S. Dak. 1975).

Where a broker accepts a note from the purchaser for a deposit, in lieu of cash funds, the broker would be liable to his principal if the transaction was not consummated and the buyer failed to pay the note. Other situations which would be tantamount to negligence could be where the broker held a check for the earnest money for an unduly long period of time, at the request of a buyer, or where he accepted a

postdated check, unless, in each of these situations, he advised his principal of the *facts* and the principal approved. It is common real estate practice for a broker to accept a check instead of cash, as an earnest money deposit. Where the broker deposits such check promptly and should the bank upon which it is drawn refuse payment because of insufficient funds, no liability can be visited upon the broker on that account. Likewise, if the buyer dies before the bank honors the check, the broker would not be personally responsible.

A real estate salesperson was held to be negligent in failing to recommend a title search to the buyer, and in representing, without knowing the real facts, that there was only one trust deed (mortgage) against the property, when there were two trust deeds: *Wilson v. Hisey*, 305 P. 2d 686 (Cal. App. 1957).

A licensee must keep up with the applicable law that affects his employment. For example, the Texas license law *requires* a broker to advise a purchaser, in writing, that the purchaser should have abstract examined by an attorney, or to be furnished with or obtain policy of title insurance. Failure to comply precluded broker from collecting a sales commission: *Jones v. Del Anderson and Associates*, 539 S.W. 2d 348 (1976).

A broker is not liable for a mere mistake in judgment that does not result from failure to know or to do that which a person of ordinary prudence, under similar circumstances, would know or do: *Zwick v. United Farm Agency, Inc.*, 556 P. 2d 508 (Wyo. 1976).

Act in person

Fourth, an agent must perform acts in person. He cannot delegate the authority which he has received from his principal to another. An owner employs a broker because of the confidence that he has in the ability and integrity of that particular person, and so a broker has no right to delegate his authority to another without consent or request of his principal, except as to matters which are of a purely ministerial or mechanical character, and where such delegation does not involve discretion, confidence, or skill.

In the California case of *Goodwin v. Glick*, 139 A C A Supp. 958 (1956), the defendant had given an exclusive listing to Petrol Realty Co. of San Pedro, upon a San Pedro Realty Board form, which provided that the listing broker might refer the listing to members of the Board. The property was sold by another member of the Board. The court said, *inter alia*,

that the provision therein contained authorizing the agent named to refer the listing to the Realty Board, which, in turn, is authorized to refer it to its members, must be construed as an authorization to Petrol Realty Co. to appoint members of the Realty Board to whom it is referred as its agent (Petrol's) and not as agents of the defendant (owner).

In a Pennsylvania case, *Campbell v. Grange*, 23 D & C 2d 344 (1961), the court denied a recovery to a cooperating broker of a real estate board. The court held the selling broker was a subagent of the listing broker, and could not sue the owner, with whom the selling broker had no privity of contract.

However, circumstances may modify the rule. In the case of *Wise v. Dawson*, 353 A. 2d 207 (Del. 1975), the Court held that multi-listing arrangements between listing and selling broker do not create an agent and subagent relationship so as to visit liability upon the listing broker for misrepresentations allegedly made by the selling broker to the buyers in a suit for damages by the buyer. The action was a tort action, based upon fraud, and could not be contracted away.

In the South Dakota case of *Croughaw v. Gerlach*, 68 S.D. 93 (1941), a broker sued for commission. The defendant was a resident of Minnesota and owned a farm in Moody County, South Dakota. One Dwight Lloyd, an attorney at Flandreau, had authority to find a purchaser for the land and was acting as defendant's agent for that purpose. The plaintiff broker contacted the attorney and contends that Lloyd agreed that if the plaintiff found a purchaser, a commission would be paid to him. Later, the broker obtained a prospect and negotiations were conducted with Lloyd but no sale resulted. Later, the same prospect saw Lloyd and rented the property for one year with an option to purchase. He later bought it. The court held that Lloyd was not authorized to employ a subagent to sell the farm at the expense of the defendant. There was nothing to show that defendant had any knowledge that the plaintiff was the inducing cause of the sale, so there was no ratification by the seller. A delegation of his authority may, however, be permitted by the usages of the trade. Where a nonresident owner of land employs an agent, also a nonresident, to sell his land, it will be presumed that such agent has authority to appoint a subagent in the locality where the land is located in order to facilitate the sale of such land. Where, however, an owner knows that a broker employed by him to sell land has secured the services of a subagent by promising the subagent half commission from the owner and the owner assents thereto either expressly or by remaining silent when it is his duty to object if he has any objection, the owner is directly liable to the subagent for his share of the commission.

Multiple listing service

In the California case of *Marin County Board of Realtors v. Palson*, 549 P. 2d 833 (1976), the Supreme Court held that it was a violation of the state's Cartwright anti-trust law to exclude part-time brokers from the Board's multiple-listing service. However, in *Barrows v. Grand Rapids Real Estate Board*, 214 N.W. 2d 532 (Mich. 1974), the Court held such exclusion was proper, where non-members of the Board were substantially able to compete and where the majority of sales in the area were not made through the multiple-listing service. However, a real estate board may exclude an applicant from membership for *cause*.

In the case of *Guadango v. Mount Pleasant Listing Exchange, Inc.*, CCH TRR Section 61,065 (N.Y. 1976), the court held that a multi-listing service rule that a broker must have an office in the community for a year is not unreasonable. Accordingly, denial of membership for that reason is not in restraint of trade under N.Y. General Business Law.

Most larger real estate boards operate a multiple listing service (MLS). Under this system, each member receives all listings of property given to every other member of the multi-service. Under the rules of the multi-list association, the listing broker receives a percentage of the commission if the listed property is sold by another broker member, and the selling broker receives a higher percentage of the commission. The multi-list association receives an overriding small percentage of the commission to defray its expenses. A member of a MLS is not prohibited from cooperating on a sale with a non-member. A Pennsylvania case holds that a MLS cannot refuse a licensed broker admission to its multiple listing service. To do so is a violation of the Sherman anti-trust law, and constitutes an unlawful restraint of trade: *Collins v. Main Line Board of Realtors*, 304 A. 2d (1973). If this decision is followed in other states, it would not necessarily follow that real estate boards would lower their high standards of competency and ethics for *admission* to the board, even though a non-member could participate in their multi-list service.

In the case of *Oates v. Eastern Bergen Multi-list*, 273 A. 2d 795 (N.J. 1971), where broker was excluded from a multiple-listing service, the Court held that it was illegal, per se, since it deprived broker of access to hundreds of properties, thereby lessening competition and restraining trade.

Account for money and property

Lastly, an agent must account for money and property of his principal. Money and property entrusted to his care should, in all cases, be kept separate and apart from his own funds. If a broker carelessly mingles his employer's funds with his own, and the bank in which the funds are on deposit should fail, the broker will be personally responsible for the loss. Most state license laws provide that the commingling of trust funds with a broker's personal funds shall constitute grounds for suspension or revocation of license. The account of the employer's funds should be kept as a trustee account, and so long as the agent exercises due care and caution in selecting a safe depository for such funds, he will not be personally responsible for any later loss. This matter is of particular importance because not infrequently a real estate broker, by agreement between the parties, retains the deposit money until such time as the deal is consummated. One trust account is sufficient for all trust funds coming into the broker's hands.

(The handling of deposit money will be discussed in greater detail in the following chapter on Agreements of Sale.)

Owner owes duty to broker

Throughout this chapter, good faith, fidelity and loyalty on the part of the broker toward the owner have been emphasized. Circumstances may also dictate and require that the same virtues should be applied to the seller in dealing with a broker. Good faith is a two-way street. In the Oregon case of *Snyder v. Schram*, 547 P. 2d 102 (Or. 1976), a real estate broker was employed under an exclusive listing for a period of five months. The listing contained an extender period of 90 days. The broker worked diligently to obtain a buyer. One prospect was the U.S. Postal Service, with whom the broker's negotiations continued beyond the 90-day extender period. Seven months after the listing expired, the broker was notified that the seller considered the listing terminated. The Postal Service, shortly thereafter, signed an option to purchase the property, which it subsequently exercised. The broker sued for a commission. The lower court denied a recovery. Upon appeal, the appellate court reversed. It held that a seller has a corresponding duty of good faith to the broker. The Court, in review, found that the broker had been encouraged throughout the negotiations by the seller, that the seller had been advised as to the progress of negotiations, and that the sale was made on substantially the same terms as had been negotiated by the broker. Under the circumstances, there had been an implied extension of the listing beyond the termination date and the seller had not acted in the good faith required.

Signed agreement does not guarantee broker's commission

It has been the general rule of law that a broker is entitled to his commission when an agreement of sale is signed by the seller and the buyer, produced by the broker. The criteria are that the broker has procured a purchaser, ready, able and willing to buy.

In the Ohio case of *McGarry Realty Co., et al. v. McCrone, et al.*, 97 Ohio App. 543 (1954), the plaintiff negotiated the sale of certain property and the plaintiff knew that the funds necessary to purchase the property were to be provided by the

buyers' relatives. The day following the execution of the agreements of sale, the purchasers called the plaintiff and told him they could not get the money. The Court said:

We find no Ohio case where this question has been clearly presented, but no principle of law has been more clearly affirmed by the courts of this state than that an agent should not be permitted to benefit by his own failure to perform his full duty in representing his principal. . .

It would appear, then, in these circumstances that a broker should have the agreements of sale signed by the persons who will furnish the funds necessary for the purchase. After the deal is closed, such person (the relative) can transfer the property to the party for whom the property is desired.

An *able* purchaser means a purchaser of substance, financially; that he was able to command the necessary money to close the transaction: *Sharp v. Long*, 283 So. 2d 567 (Fla. App. 1973); *Gopher State Bus. Opportunities, Inc. v. Stockman*, 121 N.W. 2d 613 (Minn. 1963).

In practically all states, a broker who receives an earnest money deposit is required to deposit such earnest money in a trust or escrow account until the transaction is consummated or terminated. Many brokers desire to hold the deposit money in order to guarantee payment of their commission. Where the broker receives a substantial portion of the consideration price without authorization, and the seller defalcates, the broker would be liable to the buyer for his resulting loss.

A case of great importance, which rejects the premise that the owner is liable to the broker for a commission where the buyer defaults after signing a sales agreement, is the case of *Ellsworth Dobbs, Inc. v. Johnson (owner) and Iarussi (buyer)*, 50 N.J. 528 (1967). In joining the buyer as defendant, the broker charged the buyer with breach of an implied agreement to pay the commission if he failed to complete the purchase and thus deprived the broker of commission from the seller. The trial judge held, as a matter of law, that the broker's commission vested upon execution of the contract of sale, and the commission was not dependent upon the closing of title. The jury found for the broker in the amount of \$15,000 against the owner. In reversing the lower court, the Supreme Court said:

The present New Jersey rule as exemplified by the cases cited is deficient as an instrument of justice. It permits a broker to satisfy his obligation to the owner simply by tendering a human being who is physically and mentally capable of agreeing to buy the property on mutually satisfactory terms, so long as the owner enters into a contract with such person. The implication of the rule is that the owner has the burden of satisfying himself as to the prospective purchaser's ability, financial or otherwise, to complete the transaction; he cannot rely at all on the fact that the purchaser was produced in good faith by the broker as a person willing and able to buy the property. . . . If it later appears that the purchaser is financially not able to close the title, or even that he never did have the means to do so, the owner must pay the broker his commission so long as he acted in good faith. Such a rule, considered in the context of the real relationship between broker and owner, empties the word "able" of substantially all of its significant content and imposes an unjust burden on vendors of property. . . . Thus, when the broker produces his customer, it is only reasonable to hold that the owner may accept him without being obliged to make an independent inquiry into his financial capacity. That right ought not to be taken away from him, nor should he be estopped to assert it, simply because he "accepted" the buyer. . . . In a practical world, the true test of a willing buyer is not met when he signs an agreement to purchase; it is demonstrated at the time of closing of title, and if he unjustifiably refuses or is unable financially to perform *then*, the broker has not produced a willing buyer.

It should be noted that when it became clear to the seller that there was no hope of the buyers completing the sale because they could not finance the purchase, the parties exchanged mutual releases, which the court held, under the facts present, did not and was not intended to amount to the equivalent of performance of the contract. In holding the buyer responsible to the broker, the court said:

This court has held that when a prospective buyer solicits a broker to find or to show him property which he might be interested in buying, and the broker finds property satisfactory to him which the owner agrees to sell at the price offered, and the buyer knows the broker will earn commission for the sale from the owner, the law will imply a promise on the part of the buyer to complete the transaction with the owner. If he fails or refuses to do so without valid reason, and thus prevents the broker from earning the commission from the owner, he becomes liable to the broker for breach of the implied promise. The damages chargeable to him will be measured by the amount of commission the broker would have earned from the owner.

This New Jersey case has been cited with approval in *Staab v. Messier*, 264 A. 2d 790 (Vt. 1970) in the east and on the west coast in the case of *Brown v. Grimm*, 481 P. 2d 63 (Or. 1971), where the court said: "The leading case in the United States adopting this view is *Ellsworth Dobbs, Inc. v. Johnson*, 50 N.J. 528 (1967)." Also, *Tristram's Landing, Inc. v. Wait*, 327 N.E. 2d 727 (Mass. 1975). Also cited with approval in Connecticut, Iowa, Idaho and Kansas.

Forfeiture of deposit money—when commission is payable

Many listing contracts in current use provide: "A deposit made, if forfeited by the buyer, shall first apply to the broker's commission; the balance, if any, shall belong to the owner."

While a broker is certainly entitled to a return for his efforts, good conscience requires that it shall not be at the expense of an innocent principal. Suppose the clause in question is used and the broker obtains a purchaser for a property at \$10,000, and collects a deposit of \$500. Later, the buyer defaults and forfeits the deposit money. Should the broker be permitted to retain the *entire* deposit as commission on the ground that the owner has a legal right to sue the defaulting buyer, even though litigation may prove futile? It is scarcely ethical that the broker should keep all the money paid on account of the purchase of the owner's property, and the latter be required to pursue litigation, entailing additional expense of costs and attorney's fees, for recovery of a judgment which may be uncollectible. In addition, the property may be tied up for a considerable period of time from the date when the agreements were signed. Fair dealing requires that the down payment be divided equally between broker and owner, up to an amount where the broker receives full payment of his commission. A *common* provision used in the agreement of sale relative to the earnest money reads:

Should the buyer fail to make settlement, as herein provided, the sum or sums paid on account of the purchase price, at the option of the seller, may be retained by the seller, either on account of the purchase price, the resale price, or as liquidated damages. In the latter case, the contract shall become null and void. In the latter event, all monies paid on account shall be divided equally between the seller and the broker, but in no event shall the sum paid to the broker be in excess of the amount of commission due him.

Care must be exercised, however, even with respect to the use of the above clause. In *Kulp Real Estate v. Rudolph Favoretto et ux.*, 316 A. 2d 71 (N.J. 1974), the Court, following the landmark decision of the Dobbs case cited earlier, found such a clause in a listing agreement unenforceable and void as against public policy. The

Court found that there was “. . . a substantial inequality of bargaining position between the broker and vendors,” because the broker was an experienced firm and the vendors, who had no prior real estate experience, signed a printed standardized form of brokerage agreement without benefit of counsel. While this holding may not be followed widely in other jurisdictions, it may be wise when employing such a clause to make sure that the client understands it before he signs the listing agreement: *House v. Erwin*, 501 P. 2d 1221 (Wash. 1974).

In the case of *Barry Norman Agency, Inc. of Morris County v. Elias*, 285 A. 2d 80 (N.J. 1971), the broker sued the owner for the 7 1/2% commission, mentioned in the exclusive right to sell listing. The owner had revoked the listing 10 days after the listing was executed, in a telephone conversation. The broker then decided “to let the listing run out.” The broker did not advertise the property or show it to any prospective purchaser. It was sold through another broker. The Court stated that “the relationship between broker and seller has been characterized as one involving substantial inequality of bargaining power: *Ellsworth Dobbs, Inc. v. Johnson*, 236 A. 2d 843 (1967). Certainly it is a relationship that requires substantial scrutiny when brought before the Courts.” The broker was only entitled to such damages as he could prove, rather than the amount of his expected commission.

In *Hersh v. Kelman*, 104 N.E. 2d 35 (1951), plaintiff obtained a purchaser and a \$200 deposit on an “open listing.” Before the owner would sign the agreement, he had the broker write into the agreement “commission to be paid when deal is consummated.” The buyer moved to Detroit and defaulted. The seller sold the property through another broker and paid a commission. The first broker sued for a commission. The lower court decided in favor of the broker. The appellate court reversed. The Court said:

Failure of the prospective purchasers to consummate the deal, without any fault on the part of the seller, relieved the seller completely under the special terms of the contract from liability for the payment of any commission.

In the case of *Jones v. Palace Realty Co.*, 226 N.C. 303 (1946), the North Carolina Supreme Court held that it was the event of closing the deal and not the date of its expected or contemplated happening that made the promise to pay enforceable. In the case of *Bechtel Properties, Inc. v. Blanken*, 299 F. 2d 928 (D.C. 1962), the agreement provided that “if the purchaser shall fail to make full settlement, the deposit herein provided for may be forfeited at the option of the seller. . . .” The agreement further provided that:

The entire deposit shall be held by Sam Blanken & Co. until settlement hereunder is made or until the deposit is forfeited. . . .

The broker had obtained a purchaser, who had shown himself ready, able and willing to perform. Certain matters arose which could not be resolved and the lower court said: “Apparently the transaction was just abandoned by the parties when the property was resold by the defendant.” The appellate court said:

In view of the fact that the contract was not settled, through no fault of the agent, and apparently by mutual agreement of the seller and the purchaser (or, if not by mutual agreement, at least with the acquiescence of the seller), the commission agreement could not be performed in accordance with its terms. This is not to say, however, that the agent is to be deprived by that reason, of his commission, which was in the total amount of \$7,000.

In the New Mexico case of *Stewart Realty v. Brock*, 60 N.M. 216 (1955), the broker had a listing of a ranch at \$85,000; the broker’s commission was to be 5 per

cent. The broker obtained a buyer at that price, who paid \$8,500 as a deposit. The buyer wanted to withdraw from the deal. The seller agreed, if the buyer would pay an additional \$1,500. The buyer paid the \$1,500. The broker claimed a commission of \$4,250. The owner offered 5 per cent of the \$8,500 deposit, or \$425. Upon suit, the court allowed the full amount of the commission claimed.

Sometimes, in an installment purchase contract, the broker receives his commission as the installments are paid. In the case of *Hussey v. Stephens*, 194 S.E. 2d 243 (S.C. 1973), the broker negotiated the sale of a motel for the sellers, who obtained a purchase money mortgage for \$335,000, payable in annual installments of \$25,000, in three payments of \$8,333.33 each. The broker's commission was \$10,000, with \$2,000 paid at the time of the sale and the balance at the rate of \$727.27, beginning September 1, 1969, each time a \$25,000 payment was made. The buyer made two annual payments, but on April 30, 1971, reconveyed the motel to the sellers for \$30,000 and cancellation of the mortgage. The broker then sued for the balance of the commission. The Supreme Court held that the reconveyance of the property to the sellers did not constitute an acceleration of the commission upon satisfaction of the mortgage, and reversed the lower court's award of commission.

A situation could arise where, under such an installment contract, the contract is rescinded before maturity, and in consideration of the return of the property the seller foregoes the remaining payments. As a cautionary measure, the listing agreement should anticipate this possibility and the broker should protect himself accordingly: *Larkins v. Richardson*, 502 P. 2d 1156 (Ore. 1972).

Rate of commission

If, in the contract of employment, nothing is said in regard to the rate of commission, then the broker is entitled to a reasonable rate of compensation, this rate being the one used generally in the business in the particular locality in which the property is situated. It is assumed here, of course, that the broker is licensed. Since an owner entrusts his property for sale to a person whose ordinary business is to sell real estate on a commission basis, the law presumes, in the absence of any agreement to the contrary, that commission or compensation is to be paid for the services rendered. The rate is not fixed by any statute, but is a matter of custom or trade usage. The broker can recover on a "quantum meruit" (what he deserves) basis, or what his services are worth. In order to avoid any controversy or future litigation, it is always necessary that the rate of compensation should be negotiated in advance, at the time of the employment. There is no provision in any license law regulating or attempting to regulate the rate of commission to be charged. It is one of voluntary agreement between the parties.

The United States Department of Justice instituted suits against a number of metropolitan real estate boards alleging that board rules fixing or recommending rates of commissions were violative of the Sherman anti-trust law. Consent decrees have been entered in a number of these suits, whereby the boards agreed to discontinue the practice. The consent decrees *require* that the broker *must* "negotiate" with the owner the amount of commission to be charged in the sale of real estate.

Several real estate brokerage firms, and members thereof, were convicted by a jury in the United States District Court in Baltimore, Maryland, of a conspiracy to raise commissions on residential properties from 6% to 7% (Criminal Court, U.S. District Ct. Md. Docket #77—0185, 1977). The trial judge assessed fines aggregating \$200,000, and probationary terms for the defendants. The verdicts have been appealed to the United States Circuit Court of Appeals. In addition, the Attorney

General of Maryland has filed a civil action seeking \$700,000 in refunds and about \$2,000,000 in damages (Civil, U.S. District Ct. Md. Docket #77—618, 1977). Four class action suits also have been filed by home sellers who were charged the 7% commission.

In states where a written listing is required by statute, the listing must state the amount of the commission agreed to be paid to the broker. It cannot be supplied later by an oral promise: *Gray v. Kohlase and Lines*, 502 P. 2d 169 (Ariz. 1973). This is the general rule, followed in Idaho, New Mexico, Oregon and Texas. The minority rule followed in California is to the effect that the amount of commission may be shown by parol where there is a sufficient memorandum to show the *fact* of employment: *Beazell v. Schrader*, 381 P. 2d 390 (Cal. 1963).

Sale of stock in lieu of deed

Sometimes a broker, employed to sell real estate of a corporation, will procure a purchaser who agrees to accept a transfer of stock of the corporation, representing the purchase price for the property, instead of a deed. The broker is, nevertheless, entitled to a commission, despite the fact that there is a transfer of personal property rather than conveyance of real estate. Where a corporation sells corporate stock, representing the value of the real estate sold through a broker, and said stock is transferred to the buyer, the broker is entitled to his commission on the sale of the shares of stock: *Heymann v. Electric Service Mfg. Co., Inc.*, 194 A. 2d 429 (Pa. 1963).

In the case of *Lyons v. Stevenson*, 135 Cal. Rptr. 457 (1977), the Court held that a licensed real estate broker who is not a licensed securities broker may recover a commission, although he knows that the transaction will result in transfer of securities, if such transfer is *incidental* to sale of the realty.

See also *Baird & Wagner, Inc. v. Ruud*, 359 N.E. 2d 745 (Ill. App. 1976).

Authorization to sell in management contract

In the case of *Adams and Leonard, Realtors, v. Wheeler*, 493 P. 2d 436 (Okla. 1972), the plaintiffs had a Property Management Agreement for a definite period of time. It contained the provision:

The agent shall have the sole exclusive right to sell and offer for sale the property covered herein, if the property is sold or offered for sale during the terms of this agreement.

The owner sold the property himself while the agreement was in force. The plaintiff did not have anything to do with the sale. The court said:

The broker performed no services concerning the sale of the property. Until he had performed some of such services the contract was unilateral. The agreement could not be construed as constituting a completed and enforceable "right to sell" real estate listing contract. . . . We see no reason why a valid and enforceable "exclusive right to sell" contract could not be incorporated in a property management agreement, if the "exclusive right to sell" contractual provisions are complete concerning their rights and obligations if the property is offered for sale or sold. However, if the "exclusive right to sell" provisions are incomplete and unenforceable, an action for damages will not lie for breach of the unenforceable contract.

The Supreme Court affirmed the lower court's denial of a commission.

Minimum net sale price

Where the owner has fixed a minimum net price, below which the agent may not sell the property, the question frequently arises as to whether or not the broker is entitled to any excess realized over and above the net price. In other words, as-

sume that an owner has left property for sale with a broker, with the understanding that the property is not to be sold for less than \$10,000, and the broker negotiates a sale at a price of \$12,000. The question arises as to the distribution of the \$2,000 excess. It must be remembered here that the first duty an agent owes to his principal is that he must do everything possible to assert and protect his principal's interest; and so the courts have held that under the circumstances which have just been outlined, the \$2,000 belongs to the owner. This is so unless it is *expressly* stipulated that the broker is to retain the excess as his commission.¹ While net listings are used frequently, they are not looked upon with favor in good real estate circles. Since the property belongs to the owner, he should receive the highest possible price for it and the broker should look to his compensation upon a basis commensurate with his services. There is a creed that "labor is worthy of its hire." A broker who receives \$1,200 commission (6%) upon a \$20,000 sale has, usually, earned a fair return for his services. In a number of areas, consonant with inflation, the going rate of commission is 7 per cent.

Where a property is listed with a broker upon a net listing basis of \$30,000 and the broker obtains an offer of \$37,500, it seems unconscionable that the broker will earn 25 per cent on the deal. Net listings, further, are conducive to fraud in that a broker is often sorely tempted to employ a straw purchaser and then resell the property at a handsome profit. Alabama, British Columbia, California, Georgia, Maryland, Michigan, Ontario, Tennessee, and Utah prohibit or regulate net listings.

In order for a broker to recover commission under an express contract requiring a net price to the owner, he must procure a purchaser at a price sufficiently in excess of the net price to cover commissions. An owner listed with a broker for sale certain real estate, which consisted of 13 houses. The owner wrote the broker: "I think you might proceed and sell the entire 13 houses separately for \$50,000 net cash to me. Your commission is 3% to come out of the last sale made." The houses were sold for the aggregate of \$50,000. The owner refused to pay a commission and the broker sued for \$1,500. The broker could not collect, because, as the Court stated:²

Where one states to a broker that he will sell land for a certain sum "net" to him, the broker, on procuring a purchaser, is entitled to no commission unless the sum received exceeds the "net" price, the word "net" meaning that which remains after deducting all charges and outlay. We see no weakening of the effect of the word "net" by the words used in the communication which the prospective vendor sent to the broker, quoted above, that the commission was to come out of the last sale made. The agreement was in writing and there is nothing in the case which would justify a departure from the evident purpose of the agreement that the vendor was to get \$50,000 net cash, clear and above any commissions.

In the case of *Kerdyk v. Hammock Oaks Estates, Inc.*, 342 So. 2d 833 (Fla. App. 1977), the broker, who procured a buyer for a vacant tract of land at \$50,000, was told the figure was to be a net price, after commissions. The broker disclaimed any net price agreement. The offer was refused.

Three days later, the defendant conveyed the property to the sister-in-law of the president of the defendant corporation. The same day, she conveyed the property to the broker's purchaser for \$50,000. The Court held that the broker was entitled to a ten per cent commission on the sale.

In the case of *Quality Home Builders v. Harrick*, 173 S.E. 2d 846 (Va. 1970), an owner listed property for sale with a broker for \$455,000 *net*; sale was ultimately consummated for \$455,000 but the defendant refused to pay any commission to the

¹ Nelson et al v. Rosenblum Inc. 182 N.W. 2d 666 (Minn. 1970).

² Fink v. Dougherty, 90 Pa. Super. 443 (1927).

plaintiff broker. The court held that there was a special contract between the broker and owner predicated upon the consummation by the broker of a sale at the net price named. Since no sum was received over and above the net price designated, the broker could not recover for his efforts. In the case of *Nelson v. Rosenblum Co.*, 182 N.W. 2d 666 (Minn. 1970), property was listed with a broker at \$36,000 *net* and the broker obtained a purchaser who entered into a legally enforceable purchase agreement for the price of \$37,500. Earnest money was paid by the purchasers to the defendant. Before date of settlement, the purchasers advised the broker that they had taken employment in Florida and they would default upon the contract and forfeit the earnest money. The owner demanded the entire deposit sum of \$2,500. The court noted that the parties did not condition payment of the commission upon actual consummation of the purchase agreement. It held that if, without any fraud, concealment or other improper practice on the part of the broker, the principal accepts the person presented and enters into a binding and enforceable contract with the purchaser, the commission is fully earned.

Employment of several brokers

The rule of law is that two or more brokers possess concurrent authority to sell, and that the sale of the property by one of them terminates the agencies of the others by removing the subject matter of the contract. It is advisable for an owner listing a property for sale with a number of real estate brokers to inform each broker that the property has been listed for sale with other concerns, and that upon the sale of the property by one, the employment of the others shall automatically cease. In Virginia, the law is that if two or more brokers, knowing of one another's employment, are employed to sell the same land, the owner, if he shows no favoritism, may sell to the purchaser who is first produced and the broker producing such purchaser is the one entitled to commission.³

A serious difficulty, where a property has been listed with a number of real estate offices, is that frequently a single purchaser is the prospect of a number of brokers. When a sale results in that purchaser, which broker is entitled to the commission? The test for recovery is determining which broker was the efficient and procuring cause of the sale. It is most important, then, for a broker, in order to protect his rights to a commission, to acquaint the owner with the identity of every prospect to whom he submits the property. One good-sized commission, as a result of such notice, will adequately compensate a broker for the detail work entailed. It is not to be inferred that a broker may merely submit the name of a prospect and then sit idly by and await the fortuitous circumstance of a sale ultimately occurring. He cannot be guilty of abandonment and then claim compensation because a sale is made to his original prospect. He must activate the sale, although the mere introduction of the principals may suffice, and if that sets in motion a series of events which culminate in a sale, a commission is earned. The rule is well stated by the West Virginia Court⁴ to be: "If a broker sets in motion machinery by which sale is made, which without break in its continuity, was procuring cause of sale, he is entitled to commission, although he does not conduct *all* negotiations." In the case of *Dobson v. Wolf*, 54 N.W. 2d 469 (South Dakota, 1952), the Court said:

If a broker does not have the exclusive sale of property, he does not become entitled to a commission merely by showing the property to the person who eventually buys it, but a personal introduction of the purchaser to the owner is not essential and it is sufficient if, through the efforts of the broker, the parties are brought into communication with each other. *It is not*

³ Cannon v. Bates, 115 Va. 711

⁴ Averill v. Hart & O'Farrell, 101 W.V. 411 (1926).

enough that a broker's efforts may have contributed to the negotiations resulting in the Sale. "If this were the rule," says the court in *Carney v. John Hancock Oil Co.*, 187 Minnesota 293, "no owner desiring to sell could safely employ more than one broker, for in the event of each of several being able to convince a jury that he had contributed anything to a sale, the principal might be held for as many commissions as there were brokers employed. The law contemplates no such absurdity."

To the same effect is *Vreeland v. Vetterlein*, 33 New Jersey 247 (1869), in which it is said:

Where the property is openly put in the hands of more than one broker, each of such agents is aware that he is subject to the arts and chances of competition. If he finds a person who is likely to buy, and quits him without having effected a sale, he is aware that he runs the risk of such persons falling under the influence of his competitor—and in such case, he may lose his labor. This is a part of the inevitable risk of the business he has undertaken.

Where claims for commission have been advanced by several brokers, who claim to have produced the same purchaser for the owner's property, an owner should hesitate in voluntarily paying any commission. There have been many instances where an owner has voluntarily paid a commission to one broker, and a court and jury have subsequently decided that the sale resulted from the efforts of a second broker, so that the owner was compelled to pay a second commission. Where the owner is in doubt regarding which broker's effort produced the sale, he should pay the amount of commission into court and there have the matter settled by a court of law without any further liability to himself, in an interpleader suit.

In the case of *Julius Heller Realty Co. v. Jefferson Gravoco Bank*, 144 S.W. 2d 174, 176 (Mo. 1940), the Court succinctly quoted the law as follows:

In other words in these cases where an owner appoints more than one broker to procure a purchaser for his property, the rule is to the effect that he "who sows the seed and tills the crop is entitled to reap the harvest—rather than one who volunteers to assist in tilling a crop, the seed for which he has not sown." The question of whether the plaintiff was procuring cause of the sale was for the jury to determine. Verdict in favor of owner affirmed.

Duty to report all negotiations

In the case of *Dean v. King Service*, 249 N.E. 2d 45 (Ohio 1969), a broker had an exclusive listing. He showed the property to a prospect on June 4, 1966, during the extender period. After the extender period expired, another broker showed the property to the same prospect on July 20, 1966. The property was deeded to that prospect on August 12, 1966. The first broker sued for a commission and won the case in the lower court. The Court of Appeals affirmed. However, the Supreme Court reversed. It held that "the law imposes upon such an agent a duty to report his negotiations with prospective purchasers to his principal, especially where he expects to rely upon those negotiations as a basis for collecting a commission on the sale of their property after the expiration of the exclusive listing."

In *Hickam v. Colo. Real Estate Commission*, 534 P. 2d 1220 (1975), the Court held that a broker is obligated to his principal to communicate promptly all definite offers for purchase, even if the broker feels that any particular offer is inadequate; this obligation is imposed for the benefit of the purchaser, as well as the vendor.

However, failure of a broker to disclose the identity of the seller to a prospect who later purchases the property, *during the term of the broker's listing*, is not fatal to the broker's claim for commission. In the case of *Lee C. Richards, Inc. v. Brewer*, 548 S.W. 2d 196 (Mo. App. 1977), the Court held that the nondisclosure to the owner appeared to be neither material nor prejudicial.

The case of *Realty Marts International, Inc. v. Barlow*, 348 So. 2d 63 (Fla. App. 1977), raised the question of whether the plaintiff-broker was precluded from obtaining a commission when the broker "failed to notify the owners that the subject property had been shown to the ultimate purchaser." The Court said:

A Realtor is under no obligation to notify the owner every time the property is shown. . . the owners were notified that applicant's salesman had shown the property to the purchaser prior to the sale. . . . The law is well settled that an owner is liable for a commission *where, with the knowledge of pending negotiations between the broker and the purchaser, the owner completes the sale of which the broker is the procuring cause.* (emphasis supplied)

Where a broker fails to acquaint the owner with the identity of his prospect, the owner may not know that the prospect is also the prospect of another broker at the same time. It is wise to keep the owner informed of negotiations as they proceed. Where this is done and a sale results, the owner, no doubt, will feel that the commission paid was well earned. It cannot be emphasized too strongly that a broker should acquaint the owner with the identity of *every* prospect to whom the property is submitted. One good-sized commission, as a result of such notice, will adequately compensate a broker for the detail work entailed: *Tucker v. Green*, 96 Ariz. 371 (1964). Such a notice may be as follows:

SLOAN and SLOAN, Realtors
Real Estate and Insurance
1294 State Street
Philadelphia, Pa.

261-3700

Date July 19, 1977

Mr. and Mrs. James L. Stone
Street 3107 Waldheim Drive, Ambler, Pa.

Please be advised that we have recently submitted to Don Cook, Mrs. Ann Bennett, and Lawrence Clifford your property listed with this office, located at 864 Main Street, Narberth, Pa.

Price quoted \$18,500. We will endeavor to interest this prospect further. If they return to examine same, or call by phone, please notify us at once, as your cooperation will greatly assist in the sale of your property.

SLOAN and SLOAN
By Andrew Sloan Salesman

NOTE: — If any change has taken place since your property has been listed with this office, we would appreciate word from you at once.

In the case of *Watts v. Barker*, 275 Ky. 411 (1938), the Court said that where a property has been listed for sale with more than one broker, the owner is liable for only one commission, even if more than one broker has dealings with the ultimate purchaser; the broker who succeeds in bringing the seller and buyer together and induces them to enter into the contract is the one who earns the commission, regardless of which broker first introduced seller and purchaser. The Court further stated that the seller would not be liable to brokers with whom she had listed real estate, if trade was closed through another broker with whom she had also listed realty and the owner had not been advised by a first broker that the purchaser was her customer until after the sale had been completed.

Of course, all parties must act in good faith. A purchaser cannot accept the services of a broker and, when the deal is imminent, arbitrarily or capriciously dismiss the broker and refuse to do business with him. Nor can he circumvent the broker

by using a third person as the purchaser for him. In *Orr v. Woolfolk*, 250 Ky. 279 (1933), the Court said, "Where a broker's prospect interests another who becomes the eventual purchaser of property which the owner had listed with broker for sale, the broker is entitled to his commission." This does not mean, where a broker negotiates the sale of a property in a subdivision to a purchaser and the buyer interests a friend in an adjoining house, and the friend buys directly from the owner, that the broker is entitled to a commission on the second sale.

In *Beougher v. Clark*, 81 Kan. 250 (1909), the Court has stated the principle of law as follows:

The law will not permit one broker who has been entrusted with the sale of land and is working with a customer whom he has found, to be deprived of his commission by another agent stepping in and selling the land to the customer so found by the first broker. The utmost good faith must be exercised between the principal and the broker.

To the same effect is *Greshman v. Lee*, 152 Ga. 829 (1921).

Must be efficient and procuring cause of sale

The general rule of law is well settled that, in order for a broker to succeed in asserting a claim for commission, he must be the producing cause of the sale. In *Harkey v. Gahagan*, 338 So. 2d 133 (La. App. 1976), the Court stated that "procuring cause" refers to efforts of broker in introducing, producing, finding, or interesting a purchaser, and means that negotiations that eventually lead to a sale must be the result of some active effort of the broker. It may be said that the broker must initiate a series of events, which, without interruption, result in a sale.

To determine which of several brokers is entitled to the commission, where each claims to have found the same purchaser, is often a problem of no little difficulty. Where all the brokers are employed independently, at least it would seem that the ordinary rule applicable to the case of the employment of a single broker would apply; that is, that the broker who was the efficient procuring cause of the sale is entitled to the commission and that this right cannot be affected because the principal in person, or by another agent, takes into his own hands and completes the transaction which the broker has inaugurated.

Where two or more brokers are employed, there is no implied contract to pay more than one commission, and it therefore becomes necessary to lay down a rule for determining which one of different possible claimants is entitled to be paid. Where several brokers have each endeavored to bring about a sale which is finally consummated, it may happen that each has contributed something without which the result would not have been reached. One may have found the customer, who otherwise would not have been found, and yet the customer may refuse to conclude the bargain through his agency; and another broker may succeed where the first has failed. In such a case, in the absence of any express contract, the only one entitled to a commission is the one who can show that his services were the really effective means of bringing about the sale, or "the predominating efficient cause."

Where several brokers are openly and avowedly employed so that each can be said to have undertaken the employment on that basis, it is held in many cases that the entire duty of the principal is performed by remaining neutral between them and that he has a right to sell to the buyer who is first produced by any of them without being called upon to decide which of the several brokers was the primary cause of the sale.

Other cases state the rule somewhat less broadly, and it is everywhere agreed that in order to be entitled to the benefit of it, the principal must in fact have re-

mained neutral, and he certainly must not knowingly permit, much less aid in or connive at, the appropriation by one man of the rewards of what was really the result of another man's effort. However, payment of a commission to one broker by an owner is not admissible as evidence in a suit by a second broker for a commission claimed in the sale to the same prospect.⁵

The general rule of law throughout the country is well stated in the case of *Trent Trust Co. v. Mac Farlane*, 21 Hawaii 435 (1913), where the Court held that a broker is not entitled to a commission on a sale effected through another broker, even though a purchaser was introduced by the first broker or even though the sale may be aided by the first broker's previous efforts, provided the owner acts in good faith.

If one of several brokers gives notice to his principal that he cannot effect a sale, he will not be entitled to commissions because another broker, who is informed by the first that the property is for sale, succeeds in finding a purchaser. So, if two brokers are employed, and one of them enters into negotiations with a purchaser, which fail and are abandoned, he will not be entitled to commissions because another broker subsequently succeeds, wholly through his own efforts, in making a sale to the same person and upon substantially the same terms as those proposed by the first broker. The same result will follow where one broker has not been able within a reasonable time to effect a sale, and another broker afterwards succeeds in selling to a purchaser first approached by the former broker. The principal, acting in good faith and with no intention of defeating the broker's claim, may revoke his authority, while his efforts are yet unsuccessful, even though the principal in person or through another broker subsequently sells to a purchaser to whom the first broker endeavored to sell. It has been repeatedly said that the broker must be the *efficient and procuring* cause of the sale, in order to be entitled to a commission. "It is the broker who shakes the tree and not the one who runs up and gathers the apples, who is entitled to the commission." *Nichols v. Pendley*, 331 S.W. 2d 673 (Mo. 1960). *Brennan v. Roach*, 47 Mo. App. 290 (1891).

A number of courts have pronounced the rule that sale of the property by one of the brokers *terminates the authority of the brokers* immediately, *although they have no actual notice of the sale*: *Hunt v. Judd*, 225 Ill. App. 395 (1922); *Kennedy v. Vance*, 201 Okla. 80 (1949). *Dindo v. Cappelletti*, 77 A. 2d 840 (Vt. 1951).

Owner sells below listed price

If a broker or salesman brings to the owner, a purchaser who is willing and able to buy at a price below the listed price, the commission is earned if the owner actually sells the property to that prospect, or is willing to sell to that buyer: *Bass Investment Co. v. Banner Realty, Inc.*, 436 P. 2d 894 (Ariz. 1968).

The same rule of law applies if the property is sold by the owner at a higher price than the listing price given to the broker, to a prospect procured by the broker.

Abandonment of effort

Clearly, if one broker abandons his efforts, he cannot later claim a commission if a sale is made by the owner, or through another broker, to his original prospect. For example:

Broker "A" had an open listing on a property of \$30,000.00. He showed it to a prospect, Mrs. White, who was interested but did not make up her mind to buy it. Broker "B" showed Mrs. White various properties. He did not show the subject

⁵ *Walker v. Randall*, 85 Pa. Super. 443 (1925)

property, but mentioned it to her. She said she had already seen it through Broker "A." About two weeks later she called Broker "A" and stated that she wanted to go through the house again with her husband but he told her it was too late—"the house is sold." A few days later she called Broker "B" and when she mentioned that the house she was interested in was sold, he expressed surprise because he had had no notice of cancellation of the listing. He called the owner, who referred him to her attorney. The attorney told Broker "B" that there was a signed agreement from a buyer, but it was subject to the buyer's selling his present home and that he was going to advise his client, the owner, not to accept the deal, whereupon the owner accepted the deal with Mrs. White. Now, Broker "A" is claiming a commission, as is also Broker "B." Here "A" is not entitled to any commission as there was an abandonment of negotiations when "A" told Mrs. White, "the house is sold, you are too late," and did nothing more.

In the case of *Mammen v. Snodgrass*, 13 Ill. App. 2d 538 (1957), the court said:

The law is well settled in this state that the fact that the seller consummates a sale or that it is made upon different terms from those proposed to the broker, does not necessarily deprive the broker of compensation. If he is the efficient procuring cause of the transaction, he is entitled to his commission.

But that a sale is finally brought about by the efforts of the principal with a person with whom the broker had previously negotiated without success, does not furnish a basis for commission, if it appears that the broker has for a long time ceased negotiations with the purchaser and abandoned the property. A time must necessarily arrive after a prospective purchaser has declined to purchase when the owner may treat the negotiation at an end and begin an entirely new and independent solicitation. . . .

In the North Carolina case of *Jackson v. Northwestern Life Insurance Co.*, 133 F.2d 111 (1943), the Court held that a broker was not entitled to a commission where he had failed to effect an agreement and abandoned his efforts, even though he may have introduced to each other parties who otherwise would never have met. The plaintiff broker did nothing for fourteen months and the deal was closed through another broker. Whether there has been an abandonment of effort, so as to deprive a broker of a claimed commission, when a sale takes place to a prospect whom the broker contacted, is a question of fact, rather than of law. Determination is within the purview of the jury.

Introducing purchaser to owner may be sufficient

Mere introduction of the purchaser to the owner by the broker may be sufficient performance of the broker's contract of employment with the owner, depending, of course, upon the facts in the particular case. If negotiations are taken up from the point of introduction by the buyer and seller without the aid or intervention of the broker and a sale results, the broker is entitled to his commission. The question is: "Did the broker set in motion a series of circumstances, which, without interruption, culminated in a sale?" If the introduction did that, the broker is considered the efficient and procuring cause of the sale, and he can recover.

It is not a question of how much work a broker did in a particular transaction, but rather, how effective his work was. If he did the spade work by obtaining a prospective purchaser, the owner cannot then take the purchaser, deal with him directly, and turn the broker out of doors.

Nor can the owner take the matter into his own hands and complete the sale, either above or below the listing price, and then refuse to pay a commission.

The general rule of law is that, where there has been no direct communication between the broker and the purchaser, it must be shown affirmatively that the latter was induced to enter into the negotiations which resulted in the purchase through the means employed by the broker for that purpose. If the broker employed other persons to aid him, whether under pay or not, or if he put up maps, signs, notices, or otherwise advertised the property, and if by means of these measures, a person was induced to open negotiations with the owner which resulted in his buying the property, the sale may be said to have been effected through the broker's instrumentality. But it must be made to appear that what the broker did was the immediate and efficient cause of such negotiations. If the broker merely talked about the property with different persons and one of them, on his own accord and not in behalf of the broker, mentioned to another that the property was for sale, and such last-mentioned person thereupon looked into the matter and finally became the purchaser, the agency of the broker in inducing the sale was not sufficiently direct to entitle him to a commission: *Reap Realty Co. v. Hadlock*, 181 N.E. 2d 732 (Ohio 1961).

It is not a question of *how much* a broker did, but rather, how effective was *what* he did, in promoting the sale.

Where a broker posts a "For Sale" sign on a property listed with him for sale, and a prospect looks up the identity of the owner in the county offices, and then deals with the owner directly, ignoring the broker, it may be claimed that the broker was the instrumentality by which the sale was made, and that he has a case in court for his commission. Proof may be difficult to establish in such a borderline situation.

In the case of *Essres Realty & Insurance Inc. v. Zeif*, 512 P. 2d 650 (Colo. App. 1973), the court held that where a broker opens negotiations but fails to bring buyer and seller together, and later, the owner sells to the same buyer without any further effort on the part of the broker, there can be no recovery of commission.

A broker must produce a buyer while the premises are still on the market. In terminating employment an owner must act in good faith. Where an owner gives a second broker an exclusive listing agency, while an open listing is still in existence, the open listing given to a broker earlier is not automatically terminated. The owner must give notice of cancellation of employment to the first broker. A broker is not entitled to compensation for merely procuring a customer to take an option that has never been exercised.

To avoid any presumption that the employment of the broker is to continue until a sale is effected, the owner should take some action to notify the broker that his employment is terminated.

Broker should respect another broker's listing

Where one broker has an exclusive right to sell listing, other brokers should respect such listing and refrain from negotiating with the owner or a prospect during the exclusive period. Failure to do so may result in serious consequences. Several license laws provide it is ground for suspension or revocation of license if a licensee is found guilty of "having negotiated the sale, exchange, or lease of any real property directly with an owner or lessor knowing that such owner or lessor had a written outstanding contract granting exclusive agency in connection with another real estate broker": *O'Horo v. Ohio Real Estate Commission*, 4 Ohio App. 2d 75 (1964). It follows that if a real estate licensee is to be accepted by the *public* as a profes-

sional, it is only reasonable and to be expected that such licensee will maintain a high standard of ethics towards his fellow licensees, as well as to the public.

Duration of employment

Where no time is fixed for the duration of a broker's employment, either party, acting in good faith, may terminate the contract at will. Ordinarily, the contract continues for a reasonable time. What is a reasonable time depends upon the circumstances in the particular case.⁶ In the matter of the sale of the ordinary dwelling house, a few months might be said to be a reasonable time within which the broker should procure a customer. Where a broker was put in charge of selling 250 lots under an agreement which specified no particular duration, and the broker had sold only two lots in four months, it was held that he had demonstrated his inability to perform even though he was entitled to a reasonable time within which to do so. For that reason the owner was justified in terminating the contract by notice to the broker. A listing "for an unlimited period of time" is invalid: *Beerland, Reiss, Murphy & Mosher, Inc. v. Schmidt*, 261 N.W. 2d 540 (Mich. App. 1977).

A previous sale of the property revokes the agent's authority, and no notice to the broker of the sale is necessary.

In the case of *Hunt v. Judd*, 225 Ill. App. 395, the Court held that where several real estate brokers are employed to sell a property, sale of the property by one of the brokers terminates authority of the others at once, although they have no actual notice of the sale. To the same effect is *Kennedy, et al. v. Vance*, 201 Okla. 80 (1949), in which the Court said:

Since the plaintiffs were not given an exclusive right to sell, they assumed the risk of knowing that the land might be sold by the owner or another agent before they could find a purchaser, ready, able and willing to buy on the terms specified and that such a sale would ipso facto revoke their agency: *Mecham on Agency* (Second Edition), Page 625.

Owner's right to terminate agency

Where a broker is employed to sell lands for his principal and there is no stipulation in the contract as to the duration of the broker's employment, the courts have held that the principal may terminate the agency at any time and discharge the broker, subject to the rule, however, that the purpose of the revocation cannot be to deprive the broker of an earned commission. In other words, it must be in good faith. It may be in writing, oral, or implied from the circumstances. An agency once terminated is not revived by subsequent acts.

If, however, the purchaser is found within the time limited, it is immaterial that the actual sale was not fully consummated until afterwards. Where no time has been fixed, performance within a reasonable time will be sufficient, unless the offer to the broker has been withdrawn earlier. This is a question of *fact* to be determined in a trial. A lapse of one year does not necessarily terminate the broker's authority, but the authority continues until revoked, and the lapse of time is merely one fact to be considered by the jury in determining whether the authority has been revoked.

A broker may recover any expenses incurred in connection with the agency previous to the revocation of his authority. Barnes employed Adams to sell real estate. In an action in assumpsit by Adams against Barnes to recover damages for a breach of contract, it appeared that Adams had agreed to sell a tract of land belonging to Barnes, which had been laid out in 449 building lots, for which Adams was to re-

⁶ *Richter v. First National Bank of Cincinnati*, 82 Ohio App. 421 (1947); *Roudebush Realty Co. v. Toby*, 135 N.E. 2d 270 (1955).

ceive as compensation \$100 for the sale of each lot. Adams erected a temporary office upon the land and incurred expenses amounting to \$230. After Adams had sold two of the lots, it was found that Barnes' wife would not join in the deeds, and thereupon Barnes notified Adams that he was unable to carry out the agreement. The Court directed a verdict for Adams for the amount of his expenses.

Where there is an open listing and a broker has a sale imminent, the owner is liable for a commission even where he sells the property two days later to another party, without the assistance of a broker. In the case of *Romine v. Greene*, 13 N.J. Super. 261 (1951), the Court held that the broker was entitled to a commission where the defendant accepted an offer to sell two days after the broker procured purchaser at same price. Since the broker had no notification of sale prior to his performance, the owner was liable for commission "unless he could prove a binding agreement for sale made so short a time before plaintiff's performance that reasonable opportunity to notify plaintiff was not afforded under the circumstance." Citing *Mechem on Agency* (Second Edition), Page 625, *Kennedy and Kennedy v. Vance*, 202 P. 2d 214 (Okla. 1949), the Court stated as a general rule of law that the prior sale (by owner) itself acts as a revocation of the power, if insufficient time has elapsed between such sale and performance by the broker to give reasonable opportunity, under all the circumstances of the case, for notification of the prior sale to the broker. However, a broker who obtains a buyer cannot be deprived of his commission merely because the owner is negotiating for the sale on his own account, even though such negotiations materialize into a sale at a later date. Mere preliminary discussion or negotiation is not enough. There must be a binding agreement for the sale: *Hartig v. Schrader*, 190 Ky. 511 (1921); *Hawks v. Moore*, 27 Ga. App. 555 (1921).

Withdrawal of property during listing period

Where a listing is in force, and a broker has exerted efforts to negotiate a sale, the owner cannot arbitrarily cancel the listing and render himself immune to the broker's claim for a commission. In the case of *Blank v. Borden*, 524 P. 2d 127 (Cal. 1974), the broker claimed a commission after a dispute arose between him and the owner, while the listing was in force. The owner then told the broker to take his sign off the property and leave, because his services were no longer required.

The listing was on a form recommended by the California Association of Realtors. It contained a clause:

If said property is withdrawn from sale, transfer, conveyed, or leased without the consent of the agent, or made unmarketable by my voluntary act, the stated commission of 6 per cent is due and payable.

The Court found that the broker had made a diligent effort to find a purchaser, had advertised the property, and that the owner's withdrawal of the listing was complete and unequivocal. The Court said:

It is equally well settled in this state that a withdrawal from sale clause in an exclusive right to sell contract is lawful and enforceable; a claim for compensation under such a clause being not a claim for damages for breach of that contract but a claim of indebtedness under its specific terms. (citing cases)

Judgment for the plaintiff.

See also *Buckaloo v. Johnson*, 537 P. 2d 865 (Cal. 1975).

Agency coupled with an interest

Where the employment is coupled with an interest of the broker in the subject matter of the employment, the owner cannot arbitrarily terminate the broker's employment. Such an employment is irrevocable even after death. The Arizona Supreme Court so held in the case of *Phoenix Title and Trust Co. v. Grimes*, 416 P. 2d 979 (1966). In this case a broker joined with others in the purchase, subdividing, development and resale of desert land for their mutual benefit. The broker was given the exclusive right to sell the property. He performed all conditions of his contract for three years prior to his death. The defendants then served notice upon the broker's executor that they refused to permit the executor to carry on, in performing the terms of the agreement. The court held that:

If the agency or power of the agent is coupled with an interest in the subject matter of the agency, the power so coupled will survive to the personal representative of the agent upon the death. Although contracts to perform personal acts which can only be performed by the particular person contracted with are discharged by death of the person who is to perform such acts, this rule does not apply where the services were such that they could be performed by others acting on behalf of the personal representatives of the decedent: *In re Burke's Estate* 198 Cal. 163, 244 Pac. 340. We are convinced here that the executor could hire qualified licensed real estate agents to carry on the agency herein, which was coupled with an interest.

In the case of *Rucker & Co. v. Glenman*, 130 Va. 511 (1921), an owner entered into an agreement with a broker whereby the owner agreed to subdivide a plot of land and place it in the hands of the broker for sale. The owner was to receive a minimum of \$4,000 from the sale of the lots and the net proceeds over this amount were to be divided equally between owner and broker. The court held that this was not an agency coupled with an interest, but merely a method for providing for broker's commission by division of the net proceeds. In *Barnard v. Gardner Investment Co.*, 129 Va. 346 (1921), the court held that a listing "coupled with an interest" is revocable unless the words used mean an interest in the land itself, as distinguished from an interest in the proceeds of the sale.

Commission dependent upon transfer of title

A broker may, by special agreement with his principal, contract to make his compensation depend upon the actual signing of the contract, or upon the actual passing of title, or other contingencies: *Gaynor v. Laverdure*, 291 N.E. 2d 617 (Mass. 1973). Even under these conditions, a broker may recover his commissions at the time fixed in the contract of sale if it develops that the negotiations fall through by reason of some defect in the title of the seller, or upon the arbitrary refusal of the seller to go through with the deal. The owner is not permitted to plead that his failure to consummate the transaction will operate to deprive the broker of his commission.

Where the default or failure is on the part of the seller, the courts generally hold that the broker may recover the commission agreed upon. Where the failure or default is attributable to the purchaser, the rule is different.

In every case the fundamental doctrine, under varying forms of expression, is that the duty assumed by the broker is to bring the minds of the buyer and seller to an agreement on a sale and on the price and terms upon which it is to be made and that, until this is done, his right to commission does not accrue. A broker is not entitled to commissions when the customer through no fault of the seller refuses to complete the contract; but it is different when the customer has entered into a con-

tract binding upon both parties or into an agreement to pay a stipulated sum as damages in case of refusal to complete the contract.

A broker who has fully earned his commission is generally not bound by any subsequent agreement that no commission is to be paid until the deed passes, for such an agreement is without consideration and cannot affect the obligation of the owner to the broker; and the agreement is not more binding when it recites a nominal consideration or good and valuable consideration when in fact, none passed. The fact that the seller refused to make the contract unless the broker agreed to wait for his commission until the deal was closed has been said not to furnish sufficient consideration. If the agreement of sale provides that the broker's commission is to be paid *at settlement*, the contract means exactly what it states, and if the settlement does not materialize, the broker is not entitled to commission, nor is this clause to be interpreted to mean that commission is to be paid when settlement *should have* taken place.

In the case of *Jones v. Palace Realty Co.*, 226 N.C. 303 (1946), the Court held under contract for payment of commission to broker out of sales price of property:

"when the deal is closed up," he could not recover when the deal was never closed due to inability of purchaser to comply. It was the actual event of closing the deal and not the date of its expected or contemplated happening that made the promise to pay enforceable.

To the same effect is the Michigan case of *Kostan v. Glasier*, 60 N.W. 2d 283 (1953), where commission was "payable only when and if deal is finally closed."

It is a well-settled law that language in an agreement of sale that commission to the broker is "payable when title closes, or upon delivery of deed" does not constitute a condition precedent for payment of a commission, but rather the *time* when the commission is to be paid to the broker. However, the broker and owner may, by express language, make the broker's right to a commission depend upon a future happening, such as the actual passage of title from seller to buyer. If the contingency does not materialize, it is fatal to the broker's claim for a commission: *Amies v. Wesnofske*, 174 N.E. 436 (N.Y. 1931).

A clause that "commission to be paid on the sale" is strictly construed. No actual sale—no commission. The Court so held in the case of *Tristram's Landing, Inc. v. Wait*, 327 N.E. 2d 727 (Mass. 1975). In this case, the agreement of sale provided that commission was to be paid to the broker "on the said sale." The buyer defaulted and the broker sued the seller. The Court construed this language as requiring that the said sale be consummated before the commission was earned.

The same result follows where the agreement provides "no commission becomes due until the customer actually takes a conveyance and pays therefor." *Gaynor v. Laverdure*, 291 N.E. 2d 617 (Mass. 1973).

Also, where an agreement of sale provides that the broker is not entitled to his commission until condition is performed, the broker then has no claim for commission until such condition is satisfied. This principle applies with equal force to oral and written brokerage contracts: *Dixon v. Andres Tile & Mfg. Corp.*, 357 A. 2d 667 (Pa. 1976).

In the case of *Richard v. Falletti*, 13 N.J. Sup. 534 (1951), suit was brought by broker to recover unpaid half of a broker's commission earned on sale of defendant's land. The lower court rendered judgment for defendant on ground that plaintiff's right was contingent on delivery of deed, which had not taken place. The Superior Court, Appellate Division, reversed, holding that obligation to pay full commission was not contingent on delivery of deed, and that broker completed

performance, and earned commission, when he induced purchaser to sign sales agreement.

Whether a broker is the efficient and procuring cause of the sale is a question of fact, which falls within the province of a jury to determine. It is not a question as to how much a broker does in a deal, but how *effective* is what he does. The case of *Mehlberg v. Redlin*, 96 N.W. 2d 399 (S.D., 1959), is in point. The Court made the significant observation:

As background of the events of Friday, April 26, 1957, it should be noted that theretofore plaintiff had devoted time, effort and expense in establishing a market place to which both vendors and purchasers of real estate would be induced to resort. It was this preliminary activity of plaintiff which brought both Redlin and Rev. Schumann to that office. These facts suggest that to conclude plaintiff's only contribution toward bringing Redlin and the synod together was the answering of a single telephone call, is to ignore an important part of her activities.

The fact that a broker has established "a market place" for buyers and sellers of real estate is significant. Some brokers have had the experience that, occasionally, an easy deal takes place—the property sells itself—and the broker receives a substantial commission. The seller is unhappy in that he feels he has paid the broker a substantial sum of money for "doing nothing." The owner has lost sight of the fact that the broker rendered quick service and that the broker's established place of business as "a real estate market" made this possible.

Exclusive listings

Most brokers prefer a written exclusive listing contract and some real estate offices will not accept a verbal listing, particularly if the office belongs to a multi-list association. In an exclusive listing, the broker is assured that he will have the unrivaled right for a named period of time to negotiate the sale of the property in question. In return for this protection, the broker will usually advertise the property and make an added effort to sell the property. It should be remembered that there is an important distinction between an exclusive agency contract and an exclusive right to sell contract. They are not the same. In an exclusive agency contract, the broker is protected during the period specified against a sale of the same property by another broker.

It has already been indicated that a written exclusive right to sell listing is to the broker's advantage and will inure to his benefit, in the long run. In urban areas, most brokers operate under a written listing.

This is particularly true of Realtors. It is difficult to prove that an *oral* listing is an exclusive right to sell listing, rather than an exclusive agency: *Dorman Realty and Ins. Co., Inc. v. Stalvey*, 212 S.E. 2d 591 (S.C. 1975). A written listing may be changed orally: *Samuels v. Firestone Tire and Rubber Co.*, 342 So. 2d 661 (La. 1977). In an exclusive listing, the broker is given the exclusive privilege to sell the property for a definite period of time. However, this does not prevent the owner from selling his property during the exclusive period, without being liable to the broker for a commission. The exclusive agency protects the broker's right to a commission in the event that it is sold by another broker, or any person other than the owner, during the exclusive period.

There is an important difference between an exclusive agency listing and an exclusive right to sell listing. Under the latter form of listing, the broker *is* protected against a sale by the owner during the designated exclusive period. Should a sale occur by the owner, the listing broker would be entitled to a commission on the

sale: *Brown v. Miller*, 360 N.E. 2d. 585 (Ill. App. 1977). Such words as: "I hereby give to Ajax Realty Co. the sole and exclusive right to sell; and to pay a commission upon the sale, exchange, or lease with option to purchase by whomsoever the same may be made or effected" or similar words, are necessary: *Flynn v. LaSalle National Bank*, 9 Ill. 2d 129 (1958).

Since most states require a definite expiration date in an exclusive listing contract, a listing which provides for a definite period (90 days) and then states that the listing shall continue in force, unless the owner gives the broker 30 days' written notice of termination, would be deemed an unethical practice. In practice, brokers generally refer to an exclusive right to sell listing simply as an "exclusive" listing.

Many brokers mistakenly believe that they have an exclusive agency for an indefinite period, where the owner gives no notice to terminate, when they do not have such protection. For example, the following form is sometimes used:

The undersigned hereby employs Stanley Sims as the sole and exclusive agent for the sale of the property described on the reverse hereof for a term of three (3) months and agrees to pay to the said agent a commission of five (5) per cent on the gross consideration upon its sale or exchange, by whomsoever the same may be made or effected.

The agent's authority hereunder may be revoked by the owner at any time after the expiration of the above term when no negotiations are pending for the sale and exchange of the property, but only upon and after 30 days' notice in writing to that effect given to the agent. And if, subsequently to such revocation, the property should be sold or exchanged to anyone with whom the agent had heretofore been negotiating the said commission will be paid to said agent.

Suppose that a few days before the expiration of the three-month period, the broker showed the property to a prospective purchaser, who purchased the property through another broker 20 days after the three-month period expired, and the owner had not given notice to terminate the agency. The case poses two questions: (1) Was the exclusive agency still in effect? (2) Was the sale made to one with whom the broker "had heretofore been negotiating"? The law is now well established that the contract above does *not* confer an exclusive agency after its original term and until it is revoked by 30 days' written notice from the owner. *The exclusive character prevails only during the original term.* After that, the agency continues only as an open or general listing, until revoked. During the original period the broker can recover commission no matter who makes the sale; in order to recover after the expiration of the original three-month period, the broker must prove that he was the procuring cause of the sale. *Negotiating* means more than introducing or pointing out the property to the prospective purchaser. To negotiate means to discuss and arrange the details. Merely to call attention to the property without further discussing the details which necessarily follow for the consummation of the sale cannot be called a negotiation. On the other hand suppose that an owner, Ashworth, employed a broker, Bonwit, to sell his property under the following agreement:

The undersigned owner hereby employs Bonwit as the sole and exclusive agent for the term of three (3) months from the date hereof, and solely and exclusively thereafter until the expiration of thirty (30) days after written notice has been given to the broker by the owner.

The contract provides for a 5 per cent commission on the selling price, in event of a sale, whether made by another broker or by the owner himself. The contract of employment is dated January 3, 1978. No notice of termination is given by Ashworth to Bonwit, but on May 3, 1978, Ashworth, himself, sells the property to Crane. Bonwit now claims a commission. In this case the broker could recover, because the *exclusive* character of the employment has been continued by express agreement

between the parties.

A written exclusive listing for a definite period of time, may be extended *orally* for an additional period of time, by mutual agreement of owner and broker.

Exclusive right to sell

It sometimes happens that the owner has been negotiating with several prospects in the recent past, before giving the listing. He may require that the broker agree that if the property is sold to any one of those named prospects of the owner, he will not demand a commission. The names of the owner's prospects should be submitted in writing, to the broker. It is a fundamental maxim that the parties are bound by the terms of their own contract. If an owner of real estate chooses to make a contract with a broker in which it is stipulated that the broker shall have the exclusive right to sell the property within a specified time and that he shall be entitled to receive a certain commission if the sale be made within the time designated, no matter who makes it, he is bound by its terms and cannot be relieved from a bad bargain because his agreement may have been foolish or improvident. Our cases have gone thus far and no further.

Assume that an owner has signed a prepared listing contract. The contract is signed on February 4, 1978. The exclusive listing is for two months. It may be surprising to know that the contract could be terminated by the owner on February 5, 1978. Certainly, the broker has a cause of action, but what is the measure of damages? It is not the amount of commission which the broker might have earned on the deal, but rather the damages and expenses which he has actually sustained *at the date of the breach*. This amount is usually negligible. The Supreme Court of Arkansas so held in the case of *Nance v. McDougald*, 211 Ark. 800 (1947); *Barry Norman Agency, Inc. v. Elias*, 245 A 2d 80 (N.J. 1971).

In the case of *Jenkins v. Vaughn*, 197 Tenn. 578 (1955), the court granted a commission on the sale of a drugstore stating "if broker had rendered a substantial performance by spending time and money in an effort to perform, the offer becomes binding and irrevocable."

Where a principal revokes the broker's agency before the expiration of the listing period, he renders himself liable, unless such revocation is for cause, for such damages as are the proximate result of the termination of the employment contract: *Sinden v. Loabs*, 30 Wis. 2d 618 (1966). There were mutual promises, constituting consideration (a bilateral contract). Even where obligations are imposed upon one party (a unilateral contract), the owner may not breach it, where there has been *substantial* performance by the broker, such as advertising and obtaining interested prospects. Clearly, considerations of practical justice warrant and require that if there has been part or substantial performance on the part of the broker, the owner cannot arbitrarily cancel the employment before its expiration date: *Hutchinson v. Dobson-Bainbridge Realty Co.*, 31 Tenn. App. 490 (1946). If a broker has a bona fide purchaser, *before* the revocation was communicated to him, he would be entitled to recover his commission upon a sale.

In the case of *Covino v. Pfeiffer*, 160 Conn. 212 (1970), the plaintiff broker sued the former owners to recover a commission, under the following facts: On April 11, 1968, the owners gave the broker an exclusive right to sell listing, which expired on July 11, 1968. During the last week of June 1968, the ultimate purchaser first saw the property. On or about July 7, 1968, the defendant knew that the broker's prospect would buy the house. On July 9, 1968, the buyer made application for a mortgage loan. Even though the sales agreement was signed subsequent to expiration

date of the listing, the court held that the broker was entitled to a commission. The court rejected the contention of the defendants that "the owners shall not be deemed to have sold the property, which is the subject of an exclusive sale contract, unless and until negotiations with the prospective purchaser have been consummated into a binding and enforceable contract for sale." The expiration date of an exclusive listing may be waived, where after the time limit has expired the owner urges and encourages the broker to continue his efforts and the broker does so with the knowledge, approval and encouragement of the principal: *Ferris v. Meeker Fertilizer Co.*, 482 P. 2d 523 (Ore. 1971).

Furnish owner with copy of listing

Good ethics require that a broker voluntarily furnish the owner with a fully completed copy of the listing of the contract at the time it is signed. Some brokers are reluctant to give the owner a copy of the listing because they do not want him to know, perhaps, that it may run on indefinitely, unless written notice of cancellation (usually 30 days) is given to the broker.

To obviate this practice, which is considered unethical in good real estate circles, many Commissions, by statute or Rule and Regulation, require a *definite* expiration date in listing contracts. Since there is often controversy as to whether the broker actually furnished the owner with a copy of the listing, it is a good precaution to have the owner sign his name on the original copy retained by the broker, under a clause: "I hereby acknowledge receipt of a fully completed copy of this Listing Contract." The clause should be in prominent type. Failure to furnish the owner with a copy of the listing may constitute grounds for suspension or revocation of license. However, in the case of *Fleetham v. Schneckloth*, 52 Wash. 2d 176 (1958), the court held that failure to furnish a copy of the listing to the owner was not a fatal bar to a recovery of commission in a law suit against the owner.

A Rule and Regulation of the Pennsylvania Real Estate Commission requires that in the use of an exclusive right to sell contract, the broker shall carry on the face of the listing the statement, *in bold type*, that, "*The Broker earns his commission on the sale by whomsoever made, including the owner.*" In the case of *Williams v. Brittingham*, 38 D & C 342 (Pa. 1965), the broker sued the owner for a commission. The listing contract did not contain the required bold type language. The Court of Common Pleas stated that,

the act is a penal statute and must be strictly construed. . . the same result must follow in application of regulations promulgated under it by the commission. . . The purpose of the Act is to police real estate brokerage operations, and not to change the substantive law of contracts or agency. . . Had the legislature intended to make such violations a defense to an action to recover commissions, it would and could have done so. . .

Some states, by Rule or Regulation, require that the original period for an exclusive listing shall not exceed one year. In the case of *Schechter v. Voltz*, 179 Pa. Superior Ct. 119 (1955), the appellate court held that a listing for a period "until sold" was not void, but was valid for a *reasonable time*.

There is no *statutory* limitation on the duration of a listing contract. This is a matter of agreement between an owner and broker.

Termination of exclusive right to sell listing contract

Two questions arise in regard to exclusive listings, as follows:

1. Can such a contract be terminated before the expiration date?
2. Is the broker entitled to a commission upon a sale to a prospect procured by

him, who signs an agreement of sale subsequent to the expiration date in the listing?

The cases make a distinction in listing contracts as to whether they are unilateral or bilateral. In a unilateral contract, where the broker does not in any way *obligate* himself to advance the sale of the property in the interest of the owner, then what has been previously stated in regard to the owner writing a cancellation of employment applies. A unilateral listing contract imposes a duty only upon the owner to pay a commission if the broker obtains a buyer; it imposes no duty upon the broker to endeavor to get a buyer. However, in a bilateral contract where the broker expressly obligates himself to advance the cause of his principal's property, then the owner may not captiously or arbitrarily terminate the employment without being liable for damages to the broker. Such a clause creating a bilateral listing contract may read:

I acknowledge that the listing of this property, and your endeavor and efforts to procure a purchaser, through advertising, co-brokers, or otherwise, shall constitute a good and sufficient consideration for this agreement.

In the Missouri case of *Chamberlain v. Grisham*, 230 S.W. 2d 721 (1950), the Court held that after brokers listed the property and endeavored to procure a purchaser, contract became a bilateral one and was no longer revocable by owner at will. In other words, if there is substantial performance, the listing cannot be withdrawn. The listing contract must impose some duty or obligation upon the broker, as well as the owner, in order to give it a bilateral character. In some states, brokers use a form which recites, "In consideration of \$1, receipt whereof is hereby acknowledged, etc.,"

In the absence of court decisions in this area of subject matter, it would be presumptuous to speculate as to the bilateral quality of such a provision, where the broker does *nothing* to effectuate a sale; particularly in the light of court decisions oriented towards consumer and public protection.

A provision in the listing contract requiring the broker to re-list the property promptly with the members of a multi-list association, of which he is a member, would indicate an irrevocable bilateral contract, when the property is so listed in the multi-list association.

It is also well to provide a clause in the listing agreement that if the owner rescinds the contract before its expiration, or is guilty of a breach, he agrees to pay to the broker a designated sum, which may well be the amount of the commission as *liquidated damages*, and call it "liquidated damages." The contract of employment should be under seal.

The extender or carry over clause

The extender or "carry over" clause in an exclusive right to sell listing is that clause which provides that the right of a broker to a commission will be protected by the owner, if the property is sold to a prospect, procured by the broker, within a specified period of time, *after* the expiration of the original listing period. The period of protection is usually six months, but it may be longer or shorter. It is only fair and conscionable to include such a clause. Otherwise, an owner and buyer could conspire to postpone the closing until the listing period expired, and then close the deal—often at a price which squeezes out the amount of the broker's commission.

An extender clause, commonly used, reads:

In the event that, after the expiration of the listing term, the undersigned owner shall sell, transfer, lease or exchange the above property, directly or indirectly, within a period of six months from the expiration of this listing contract, or any extension or renewal thereof, to any person or persons with whom Ideal Realty Company has been negotiating or dealing for the sale, lease, or exchange of said property, the undersigned owner agrees to pay Ideal Realty Company the above commission, which shall become immediately due and payable.

Many different words are used in an endeavor to make the broker's entitlement to a commission effective, such as, if the property is sold to anyone, to whom said property was "submitted" by the said broker; to whom said property was "shown"; to whom the property had been "introduced"; to any person with whom the broker had "negotiated"; placed the owner "in touch with"; had "contact with," or the like. Should a sale result during the extender period, under any of the above terms, the broker would have his "foot in the door," so to speak, for a commission claim.

The word "negotiate" is used extensively, and in some areas, the following words are added: "and whose names have been filed with me on or before the expiration date of the original listing." In the case of *Advance Realty Co. v. Spanos*, 348 Mich. 464 (1957), the court held that the broker's use of the words "to produce" a purchaser meant "to bring forth" or to be the cause of the sale.

Where the term of the listing has expired, the owner, in the absence of fraud or bad faith, may contract with a prospect "introduced by the broker within the period of performance, either upon the same terms or upon others, more or less favorable than those the broker was authorized, without suffering any liability to compensate the latter for his services": *Everson v. Phelps*, 115 Oregon 523; *Schmidt, Inc. v. Brock*, 97 Ohio App. 469 (1953).

The listing contract involved in *Bonn v. Summers*, 249 N.C. 357 (1950), required names of prospects shown the property to be filed within three days after the listing expired.

In the case of *E. M. Boerke, Inc. v. Williams*, 137 N.W. 2d 489 (Wis. 1965), a property was listed exclusively with a broker, to remain in effect until January 15, 1957. It contained a six months' extender clause. The listing provided that the broker was to receive a commission if property was sold during the extended period "to anyone with whom you negotiated during the life of this contract, and whose name you have filed with me in writing prior to the termination of this contract." On January 15, 1957, the plaintiff mailed his list of names (including name of the ultimate purchaser) to the defendants in Florida. The letter from the broker did not reach the defendants until after January 15, 1957. The plaintiff contended that the contract expired at midnight on January 15, 1957, so that the mailing was timely. The defendants argued that the contract expired 24 hours earlier.

The court held that any ambiguity should be resolved against the broker, who prepared the listing contract. Also, that the "mailing" on January 15 did not satisfy the (time) requirement that the notice be "filed with me." The court said:

To construe or define "mailing" as "filing" is to ignore the proper meaning of the word. Mailing merely initiates the process by which an article in the due course of the post will be delivered. The requirement of the contract in question is that the notice be filed or delivered to the party offering property for sale.

The general rule of law in this connection is stated in the case of *Everson v. Phelps*, 115 Oregon 523, where a broker in Tillamook sued for commission upon a sale made several days after the exclusive agency had expired. The claim was refused. The Court said: "Where there is no fraud or bad faith on the part of the employer and the broker does not perform within the time limit, the employer, after

the expiration thereof, may contract with a customer introduced by the broker within the period for performance, either upon the same terms or upon others more or less favorable than those the broker was authorized, without receiving any liability to compensate the latter for his services."

In the case of *Schmidt, Inc. v. Brock*, 97 Ohio App. 469 (1953), the plaintiff alleged that it had a buyer, but defendant waited until exclusive expired and then sold it the next day to the buyer. The Court held that the broker could not recover as the plaintiff showed that no bad faith or any unjustifiable conduct by the defendant prevented the sale by him.

In the case, *McGuire v. Sinnett*, 158 Ore. 390 (1938), a broker had a listing contract which expired on August 23, 1936. A salesman for the broker showed the property to a prospect before the written listing expired. A second broker advertised the property after the listing expired and on September 1, 1936, the same prospect made an offer to purchase the property through the second broker and the deal was closed. The first broker sued the owner for a commission, contending that he was protected for 90 days under a clause in his listing contract which provided that the owner would pay the broker a commission if the broker placed the owner "in touch with a buyer to or through whom, within ninety (90) days after the expiration hereof, I (Seller), may sell, exchange or convey said property." The Supreme Court permitted the broker to recover, stating:

In the case before us, the broker is entitled to his commission in one of the three following instances: (1) If he found a buyer ready and willing to enter into a contract with the defendant on terms and price agreed to by the defendant; (2) if he placed the defendant in touch with a buyer to whom the defendant sold the property during the life of the contract or within ninety days after the expiration thereof; or (3) if he was the procuring cause of the sale.

The broker was entitled to a commission upon proving that he placed a purchaser in touch with the seller during the term of the listing and the buyer consummated the deal within ninety days from the expiration date of the listing. The language of the listing contract is important. "In touch with," or "in contact with" is far different from "with whom the broker has been negotiating." To negotiate means more than merely submitting or showing the property to a prospective purchaser. In the Ohio case of *Kalna v. Fialko*, 125 N.E. 2d 565 (1955), the court held that "to negotiate" means to transact business, to procure, to induce, to treat with another respecting a purchase and sale. In a 1968 case, *King v. Dean*, 238 N.E. 2d 828 (Ohio 1968), the court stated that "negotiation is not a single act, but a process. It involves a dialogue or back-and-forth communication with a purpose; in this case, to sell real estate." The plaintiff also admitted that the owners were not informed that he had engaged in discussions with the buyers.

"Negotiation" requires that efforts of the broker to interest a prospect must have proceeded to a point where the prospect is considered a likely purchaser: *Jessup v. La Pin*, 150 N.W. 2d 342 (Wis. 1967).

The case of *Nichols v. Pendley*, 331 S.W. 2d 673 (Mo. 1960), involved a suit for a real estate commission. On March 2, 1958, the parties entered into a written contract whereby the owners appointed the broker as an exclusive agent for a period of two weeks to sell their residence at a price of \$8,750. The contract further provided that "if this property is sold during the time this agreement is in force, or if sold to anyone to whom said property was submitted by Nichols Agency within three months from the termination date hereof, then in that event the undersigned shall pay to said Nichols Agency, broker, 5 per cent of the sales price as his commission due." It is admitted that within the two weeks exclusive period, a salesman of

the broker offered the property to the Woolevers for sale and took them through the house. They made no offer. The owners were present at the time. A sale was made to the Woolevers during the 90-day period following the expiration of the original term. The case turned on the interpretation of the word "submitted." The Court stated that:

The defendants contend that the word "submitted" means that the efforts of the broker must have proceeded to the point where the Woolevers were "likely purchasers." Other cases cited referred to "negotiating." It has been held generally that "negotiating" implies a situation where the interest of the buyer has been aroused to the point that the purchaser may be considered a likely purchaser. Negotiation implies a discussion of terms, a bargaining. It is generally used in connection with the *consummation* of business matters. The word "submitted" means "to leave or commit to the discretion of another."

The Court stated:

It is a close question. The acts of the plaintiff went far enough to fulfill the terms of the contract. But we are of the opinion that under the facts of this case the plaintiff "submitted" the property to the purchasers within the exclusive period when he offered defendant's property to the Woolevers for sale and took them through the house in the presence of the defendants. The broker recovered.

Lease with option to purchase in lieu of outright sale

Dealing in options is a real estate activity, and while many options are negotiated, a smaller number of options are exercised. Unless the agreement between owner and broker provides for payment of a commission based upon the money paid for the option, the broker is not entitled to a commission. It is only when the optionee exercises the option that the broker is entitled to a commission. It is the date when the option is exercised, rather than the date when formal agreements are executed, that determines the broker's right to a commission. Of course, the date when exercised must be before the option has expired: *Anthony v. Enzler*, 132 Cal. Rptr. 553 (1976).

Most exclusive listings relate to a sale or exchange of an owner's property, but are silent as to a broker's right to a commission, if the owner and the broker's prospect sign a lease during the exclusive period of the listing, with an option to purchase. The parties may wait until the broker's listing has expired and then enter into a contract of sale during the term of the lease, circumventing the broker's commission.

In the case of *Cunningham v. Aeschliman*, 296 N.E. 2d 326 (Ill. 1973), a seller and a prospect obtained by a broker entered into an option to purchase the property. This option was executed during the period of the broker's listing. The property was leased to the optionee. During the lease term, the property was sold by the owner to the broker's prospect. The court permitted a commission recovery on the sale.

Ambiguity construed against broker

The listing agreement should be clear and unambiguous as to its terms. Since the broker is the party who prepared the listing contract, ambiguity as to its meaning or doubt as to its interpretation will be construed most strongly against him.

In the case of *Roy Annett, Inc. v. Kellin*, 112 N.W. 2d 497 (Mich. 1961), a farm was listed for sale with a broker under an exclusive listing. The extender clause provided ". . . (c) if said property is sold by the owner within 6 months thereafter to any person with whom said broker negotiated with respect to a sale during the

term," the owner was obligated to pay the broker a commission. The broker had a prospect during the original listing period. A second broker negotiated a sale to this prospect during the "6 months" carry over period. The first broker sued for a commission. The court decided against the broker, holding that the property was not sold "by the owner," but through another broker. The broker could have protected himself by stating in the extender clause "by whomsoever sold" or "if sold by the owner or anyone else."

In the case of *E. M. Boerke, Inc. v. Williams*, 137 N.W. 2d 489 (Wis. 1965), the broker held an exclusive listing "until January 15, 1957, with a six months' extender clause." The listing required the broker "to file with me prior to the termination of this contract," the names of prospects with whom the broker negotiated during the exclusive period. The broker *mailed* a list of his prospects (one of whom bought the property during the extender period) on January 15, 1957. The Supreme Court stated:

... we conclude that the doubt must be resolved in favor of the defendant's (seller's) position that the contract terminated on the end of the day of January 14, 1957. Hence, the action taken by the plaintiff (broker) on January 15, in mailing the list of names, was not timely. To construe or define *mailing* as *filing* is to ignore the plain meaning of the word. Mailing merely initiates the process by which an article in the due course of the post will be delivered.

However, in the Arkansas case of *Holbert v. Block-Meeks Realty Co.*, 297 S.W. 2d 924 (1957) where the broker had an exclusive listing contract "till 8/15/55" and seller signed agreements of sale on that date, the court held that the broker was protected and could recover.

A listing contract that bore the heading "EXCLUSIVE LISTING AUTHORIZATION" but contained the words "gives the above-named agent the exclusive right of sale or exchange" precluded the broker's recovery of a commission upon a sale made by the owner. In this case, *Bourgoin v. Fortier*, 310 A. 2d 618 (Maine 1973), the Court said,

"... the contract is construed more strictly against the party who drew up the contract for he has created the troublesome ambiguity." No recovery of commission.

Broker may buy listed property

There is nothing illegal about a broker or salesperson purchasing a property listed with the broker's office, so long as the broker hides nothing from his owner and there is full disclosure of all facts which might influence his principal: *Sylvester v. Beck*, 406 Pa. 607 (1962). But, where the broker already has a purchaser committed at a higher price, ready to purchase the same property, the broker is then derelict in his duties to his principal, and would be held accountable.

Sometimes, the listing contract will specifically provide that the listing broker has the option to purchase the property at the listed price. While not illegal, it raises a question of professional ethics. Should the broker exercise the option and shortly thereafter sell the property at a higher price to a third party, the owner will probably entertain serious reservations as to that broker's integrity and good faith.

Purchaser may be liable for deceit

It sometimes happens that a broker brings a property to the buyer's attention and then the latter deals with the owner direct. Many brokers have had instances where they show the outside of a listed dwelling and the prospect disclaims any interest and will not even make an inspection of the interior. Later on, the broker finds that the prospect has purchased the property. If the broker had previously

notified the owner as to the identity of the prospect, he would have a good cause of action for commission. Clearly, if the owner is unaware of the interest of the broker's prospect or identity, the difficulty of recovering a commission is apparent. A *purchaser* may lay himself open to a lawsuit for commission by the broker, after the broker has submitted the property to him, by stating to the owner that there is no broker in the deal. A cautious or prudent seller, who has listed his property with one or more brokers for sale, will include a clause in the agreement of sale to the effect that the purchaser warrants that there is no broker involved in the sale. In the case of *McCue v. Deppert*, 21 N.J. Sup. 591 (1952), a broker, McCue of Rumson, New Jersey, sued a purchaser, Peter C. Deppert, under these very facts. There the property was listed at \$30,000, and a McCue salesman showed Deppert the property. He said he would return with his wife. Instead, he went directly to the owner, Kramer, who lived at Lakewood, and bought the property for \$25,000, "because there was no broker charge." The broker sued the buyer. The lower court decided against the broker, but upon appeal, the Superior Court held that the buyer could not "rely on his wrongful acts, in preventing the plaintiff from meeting the condition of procuring a ready, able and willing purchaser."

Another similar case was decided by a lower court in Ohio in 1952, in the case of *Schlesinger v. Zeilengold*, where the broker sued the buyer in an action of deceit and recovered a verdict of \$2,800.00. The case involved a commercial property in Lyndhurst, Ohio. There the buyer secured from the broker certain pertinent information about the property and then used it on his own. He then professed to be totally uninterested in the property and refused to enter into any discussion with the broker about its purchase. The buyer at the time was in direct negotiation with the owner. The Court's decision holds, in effect, that a prospective purchaser who perpetrates a fraud upon a broker, thereby preventing the broker from pursuing his lawful and legitimate rights under his employment contract, commits an actionable wrong in tort.

Acting as broker for buyer and seller

It is a generally accepted rule that a broker cannot act as the agent for both parties in the same transaction. Each is entitled to his undivided efforts and to the unimpaired use of his skill, knowledge, and experience. It is not possible for a broker to fulfill these requirements if he is at the same time giving an equivalent service to the other party to the contract. The interests of buyer and seller are diametrically opposed to each other. The seller is interested in getting as high a price for his property as he possibly can, while the purchaser is naturally interested in obtaining the property at as low a price as possible, and so it is impossible for an agent to represent justly these conflicting interests. The agent must not, in other words, occupy the position of a judge, impartially weighing the merits of both sides. He has been engaged by a principal to present in as convincing a manner as he can the claims of his principal, and it is therefore imperative that the broker do all in his power to secure the most favorable price possible under the circumstances. This is so whether the sale is for cash or whether there is an exchange of property involved. This general rule has been followed strictly in most states.

In the case of *Meerdink v. Krieger*, 15 Wash. App. 540 (1976), two widowed sisters were awarded \$19,000 damages. The broker advised them to purchase a \$120,000 apartment building, upon which he received a fee. He was also to be compensated by the seller. The broker argued that under the purchase contract, he was

to receive \$10,000 for his services from the buyers. The broker was held liable for the forfeiture of his agent's commission, as well as damages.

The case of *Hughes v. Robbins, et al.*, 164 N.E. 2d 469 (Ohio 1959), involved a suit by a broker for commissions, against both seller and buyer in an exchange deal. The plaintiff claimed that both parties knew of the dual agency and there was no unfairness, double dealing, fraud, or damage to the parties. Hood, a defendant, testified that he knew of the double employment. Robbins, the other defendant, emphatically denied knowledge. The Court denied a recovery. The Court said:

We find that all of such evidence as was submitted is not sufficient to justify a finding that the defendants, Mr. and Mrs. Robbins, knew of, consented to, or acquiesced in the dual agency. . . . It should be further observed that even if the defendants Hood were aware of this dual agency, and the defendants Robbins were not so aware still the broker cannot recover from either of the defendants, his principals—the rule being that the broker cannot recover from either of his principals unless both with knowledge of, consented to and acquiesced in such double employment. . . .

It has been well written that “no servant can serve two masters, for either he will hate the one and love the other or else he will hold to the one and despise the other.”

The fact that no actual damage resulted from the conduct of the broker here cannot prevent the application of this general rule, which is intended not as a remedy for the actual wrong, but, preventive of the possibility of it.

In the case of *Investment Exchange Realty v. Hillcrest Bank, Inc. et al*, 513 P. 2d 282 (Wash. 1973), the court said:

The test can only be met by a clear and express disclosure of the dual agency relationship with *consent* thereto by both parties (buyer and seller).

To the same effect is the case of *Ornamental and Structural Steel, Inc. v. BBT Inc.*, 500 P. 2d 1053 (Ariz. 1973).

Under certain circumstances broker may recover

Under certain extenuating circumstances, however, there has been a divergence from this principle of law. Even though the transaction is an exchange, the broker cannot recover commissions if he is entrusted with any discretion and has an agreement to receive any commission from one party without the knowledge of the other party. The rule, however, does not apply to an exchange of property where the broker has no discretion but is simply to bring the parties together. In such case the broker is merely a middleman. It may be said that an owner might reasonably assume that in an exchange of property, a broker receives commissions from both sides.

In summing up the law it may be stated that a broker may only recover commission from both parties to the same transaction when (1) he merely brings the parties together, (2) nothing is left to his discretion, (3) no special confidence reposes in him, (4) the fact that he is acting in a dual capacity is known to both parties, and (5) he is employed by both parties.

Broker's right to commission strengthened where agreement of lease states broker negotiated the sale or lease

It is fairly customary for an agreement of sale to state that the Brookline Realty Co. negotiated the sale and the seller agrees to pay it a commission of 7 per cent on the sales price. There was a question, for a long time, whether a broker could sue an owner, resting his case on this clause, since the agreement of sale is a contract

between buyer and seller and the broker is not a party to this agreement. There are supreme court cases in Pennsylvania and Virginia which hold that the clause is meaningful and support a claim for commission. Both cases arose in connection with such a clause in leases. In the case of *Richard B. Herman and Co. v. Stern*, 419 Pa. 272 (1965), the plaintiff broker sued for a commission on the sale of a certain business property, upon a clause in the lease negotiated by the broker that in the event that the property were sold to the tenant, the broker would be entitled to a commission.

The Court said:

Appellant (Stern) obligates himself in clear and unambiguous language, for a recited consideration from the broker, under seal, to pay specific commissions. That this particular agreement is contained in the lease agreement between the lessor, appellant and lessee, Sailor, is neither unusual nor legally objectionable. Its presence in the document can be only to create a binding agreement between principal, appellant and the agent, appellee, who signed as agent, for those commissions. Otherwise, its existence cannot be rationally explained. There is no legal or logical reason for prohibiting the inclusion of such promise. It is a practical manner of handling an everyday business matter in an efficient and legally effective manner, avoiding the necessity of other separate contracts.

To the same effect is the case of *W. D. Nelson & Co., Inc., v. Taylor Heights Development Corp.*, 207 Va. 386 (1966).

Broker is a third party beneficiary under agreement of sale

The State of Nebraska, among others, requires a listing contract to be in writing, in order for the broker to collect a commission: *Svoboda v. De Wald*, 159 Neb. 594 (1955). However, in the Nebraska case of *Mid-Continent Properties, Inc. v. Pflug*, 249 N.W. 2d 476 (1977), a licensed broker, who did not have a written listing, negotiated a sale of the defendants' property at \$300,000. The contract of sale, executed by the owners and purchaser, included a clause that read: "Seller agrees to pay Mid-Continent Properties, Inc., a commission of five per cent (5%) computed on the total purchase price" The agreement of sale was not signed by the broker. The plaintiff sued as a third-party beneficiary under the agreement of sale. The Court said:

In this case we deal with a contract that complies with all the requirements of the statute save for the lack of the broker's signature. It is not a direct contract between broker and landowner, such as the statute contemplates, but a contract in which the broker is a third-party beneficiary. Clearly and indisputably there was an understanding between the broker and the landowner for the commission sought to be recovered. No reliance on oral testimony is required; the agreement is definitely established and the object of the statute of frauds complied with

The Supreme Court reversed the District's Court dismissal and remanded the case with directions.

Care in making representations

If a broker is authorized to sell property for his principal as well as to initiate negotiations, it is very important that the broker be circumspect in the representations which he makes to prospective purchasers concerning the property for sale. Representations include not only actual statements made by the broker, but also any impression or belief that his conduct is calculated to produce in the mind of the other party as to the facts. The law holds the broker responsible for his representations in almost the same manner as if he were acting for himself. Not only will the

broker lose his right to commission when he has been guilty of misrepresentation, but, in addition, he may find himself the defendant in an action brought by the disappointed purchaser, such as a fruitless action against the principal in the contract, for any damages or expenses incurred by the disappointed purchaser.

Even more important, the broker may find himself the defendant in an action before the Real Estate Commission for violation of the license law.

The general rule of law is well stated by the Nebraska Supreme Court⁷ as follows: "A person is justified in relying on a representation made to him in all cases where the representation is a positive statement of fact and where an investigation would be required to discover the truth."

To answer an inquiry regarding termites by saying, "There are no termites in this house," is a statement of fact. But to say, "I have seen no termites," is not a misrepresentation, although there are termites, but the broker was unaware of that fact. The better practice would be for the broker to advise the prospect to inquire from the owner, or to have a termite inspection made.

In order to protect himself from a possible suit or complaint, the broker, in filling out the data and information to be included in the listing contract, should receive all possible information from the owner. This information should be above the signature of the owner, with the statement:

"I/We represent the information contained in this listing, as part thereof, is true and correct." Unless the broker, as a licensee, held out to the public, qualified in the field of real estate, knows or should know, that a certain item of information could be false, he is held blameless, if it later turns out that the item is false. The owner would be responsible. On the other hand, if a broker makes an unauthorized or unwarranted representation, on his own initiative, the broker will be held personally responsible.

Broker acting as owner held to high degree of fidelity

A real estate broker, in selling his own property, must be careful that he is not guilty of a material misrepresentation to a buyer. The penalty is severe, as he may be held responsible, even though acting as a principal and not as a broker. It could mean the loss of the broker's license. To jeopardize his (or her) license is to jeopardize one's livelihood: In *re Isaacs*, 181 N.Y.S. 403; *Maple Hill Farm v. New Jersey Real Estate Commission*, 170 A. 2d. 789 (1961); *McKnight v. Real Estate Commission*, 122 So. 2d 420 (Fla. 1976); *Real Estate Commission v. Tice*, 190 A. 2d. 188 (Pa. 1963); *Boineau v. S. C. Commission*, 230 S.E. 440 (1976); *Blank v. Black*, 512 P. 2d 1016 (Or. App. 1973). It has been stated that "a single standard of honesty and competency should guide a broker's real estate activities, whether performing as broker or owner."

Puffing of goods

There is also a doctrine of law to be noted here known as "puffing of goods." Where the broker makes extraordinary and extravagant statements regarding the property for sale, as, "It is the most beautiful spot in the world," and, "The sun shines daily," and where there is no serious intent to include in the contract for sale that the property possesses all the magical powers and charms claimed for it, the deluded victim has only his pains for his trouble and no remedy at law. A principal selling property is presumed to know whether the representations he makes concerning it are true or false, and if he knows them to be false, then he commits a positive fraud. If he does not know whether his representations are true or false, then

⁷ *Martin v. Hutton*, 90 Neb. 34 (1912).

his actions constitute gross negligence, and in contemplation of law, a representation founded on a mistake resulting from such negligence is fraud. The purchaser confides in the information furnished him by the owner upon the assumption that an owner knows his own property, and it is consequently immaterial to the purchaser whether the misrepresentation proceeded from a mistake or fraud. The injury to him in both cases is the same, whatever may have been the motive of the seller.

The law imposes the same obligations upon an agent acting for the owner of the property. He must be just as scrupulous in the statements which he makes concerning it as the principal would be were he conducting the negotiations personally. If the misrepresentations made by the broker were made upon the information supplied by the owner, the broker is entitled to his commission from the owner if he procures a purchaser, and he is not liable to buyer for damages.

Not liable for honest mistakes

A real estate broker is not personally responsible for an error or mistake which he honestly makes, unless he has been careless, grossly negligent, or has gone contrary to his honest convictions and beliefs.

It sometimes happens that a broker acts for an undisclosed principal, and the prospective purchaser deals exclusively with the agent as owner of the property. In such case the agent is as liable as if he were the principal. It is the duty of the agent, if he desires to avoid personal liability on the contract, not only to disclose the fact that he is acting in a representative capacity but also to disclose the identity of his principal. If he fails to do so, it must be taken that he assumes and intends to bind himself.

Broker's liability for earnest money

The retention of deposit money, paid by a buyer on account of the purchase price, will be discussed in connection with agreements of sale. The subject is also pertinent to brokerage. We have already indicated that most state license laws *require* a broker to deposit earnest money in a trust or escrow account until the transaction is consummated or terminated. Failure to do so constitutes grounds for suspension or revocation of license. Where there is a written listing, signed by the owner, it is important that it should contain a clause to the effect that the broker should hold all deposits of earnest money in escrow until the transaction is consummated or terminated. Under such authority, the broker should encounter no difficulty in convincing his owner that the broker should hold the earnest money deposit. Of course, money paid the broker by a purchaser can be recovered by the purchaser where the owner refuses to execute the agreement or is guilty of a breach of the agreement. This is so even though the agreement provides that "It is understood that the broker is acting as agent only and will in no case whatever be held liable to either party for the performance of any term or covenant of this agreement or for damages for nonperformance thereof." This clause is not really necessary where the broker's principal is disclosed, since the action generally will be directed against the owner. But the buyer can sue the broker if the broker retains the deposit money, provided the buyer has a right of action against the owner.

The broker also has a duty to the buyer

Although the broker's primary duty is to safeguard and look after his principal's interest, nevertheless he also owes a high ethical duty to the purchaser. In the case

of *Crogran v. Metz*, 303 P. 2d 1029 (Cal. 1956), the broker was held responsible to the purchaser when he represented that a certain property could *not* be purchased for less than \$115,000, whereas it could be purchased for \$100,000. The buyer could recover \$15,000 realized by the broker in secret profits: *Petersen v. Quvel*, 552 P. 2d 538 (Or. 1976).

In the case of *Wegg v. Broderick, Inc.*, 557 P. 2d. 861 (Wash. App. 1976), purchasers brought suit against a real estate broker and its agents for damages sustained in a land contract transaction. Under terms of the contract of sale, the seller had the option, in event of default, of forfeiture or suit to collect delinquent payments. The seller refused to forfeit the equity of the buyers in the contract, but required performance. The buyers contended the broker and its agents were negligent in not advising them that they could not be relieved of *further obligation* upon forfeiting the payments made. The Court held that the broker had a duty to advise the purchasers that they would not be relieved of further obligation upon forfeiting the payments made. The Court found that the purchasers "were relying on the superior knowledge they (defendants) possessed as real estate professionals." The broker and salesman were held liable for damages.

Commission upon cancellation of lease

The question frequently arises as to a broker's right to collect commission upon the unexpired term of a lease negotiated by the broker, where the lease is terminated by a sale or where the management of the property is taken out of the broker's hands before the expiration of the lease term. Thus, two different situations are presented. In the first case, assume that a lease has been negotiated by a broker for a three-year term and the lease contains a provision that it can be terminated in event of sale of the property upon the owner giving the tenant 60 days' notice in writing to that effect. Suppose, at the end of one year, the owner makes a bona fide sale and gives the tenant the required 60 days' notice. The broker is obviously not entitled to a commission on the rent for the remaining 22 months since he negotiated the lease and is cognizant of the sales clause and his commission upon the lease term is necessarily contingent upon the tenant remaining in possession during the *entire* three-year period. In the second case, where no sales clause is contained in the lease and the owner sells the property subject to the existing lease, the situation is different. Upon negotiation of the lease by the broker, he becomes entitled to a commission for the full period of the lease. Where the new owner takes the property out of the broker's hands, his rights against the original owner continue unabridged. However, custom, as evidenced by the practice among brokers or under the rules of a real estate board, may permit a reduction of the full amount of commission claimed under these circumstances.

In the case of *Percy Galbreath & Son, Inc., v. Dehyco Co., Inc., et al*, 548 S.W. 2d. 664 (Tenn. App. 1976), the broker negotiated a lease for a five-year term. The lease included a provision wherein the lessor agreed to pay the broker "the usual commission for any subsequent lease that may be entered into by the Lessor and Lessee." A new lease was negotiated by the parties in 1974, after the expiration of the first five-year term. The broker had been paid a 5% commission under the original lease. In a suit for commission under the new lease, the broker was denied a commission. The Court said; "There is no proof of what a 'usual commission' was at the date of the original lease; nor, on the date of the new lease . . . The plaintiff cannot prevail, having failed to prove the amount of commission to which it is entitled."

In the case of *Rosenfield v. Cadence Industries Corp.*, 348 N.Y. S. 2d 523 (1973), the landlord *negotiated* the termination of a lease with the tenant, which still had 5 years and 6 months to run. The lease provided that the landlord would pay the broker 5% commission on all rents collected. The lease also provided that no commission would be paid, if the lease were terminated by bankruptcy of the tenant, assignment for benefit of creditors, or destruction of premises by fire or other casualty. The court held that the broker was entitled to commission for the unexpired term of the lease.

Trade-ins

"Trade-ins" are a comparatively recent phase in the development of real estate practice and the broker plays a prominent role in this operation. An explanation may be best illustrated by an example. Jones, a broker, advertises a property at \$27,000. Adams contacts the broker and desires to buy the house, but he must first sell his own home in order to raise the necessary finances to make the deal. The broker then enters into an arrangement with Adams, whereby his property is listed for sale with Jones at a price of \$17,000 for a 90-day period and the broker agrees that if the house is not sold within that period that he will purchase the property at \$15,000. Of course, if Jones sells the Adams house during the 90-day listing period, he will expect the usual rate of commission. Jones has the opportunity of making two commissions, but he also takes the risk that if he does not sell the Adams house, he will have to tie up his own funds and later may have to sell below the \$15,000 figure: *Jones v. Howard*, 234 Ill. 404 (1908).

Salesperson—employee or independent contractor?

It is a serious matter whether a salesperson affiliated with a broker is an employee or an independent contractor. Under the first classification, the position of the salesperson is much the same as a clerk or bookkeeper in the broker's office. This means that the broker must make returns to the Internal Revenue Service of money withheld, carry Workmen's Compensation Insurance, and is responsible for accidents occurring in the course of the salesperson's real estate activities. In the classification of the salesperson as an independent contractor, the broker is freed from such responsibilities. At times, the distinction between an employee and an independent contractor is a tenuous one, since, in relation to an owner and a buyer, the broker necessarily reserves some direction and supervision, and accordingly, assumes some responsibility to the owner and purchaser. There has been some movement for the single license concept, abolishing the distinction between a broker's license and a salesperson's license, or an associate broker's license. So far, the single license concept has not been adopted in any state.

In determining whether a salesperson is in fact an employee, or whether the person is an independent contractor, it necessarily depends upon the arrangements in effect in the particular real estate office. A written contract is *essential*, and equally important is whether the conditions stated in such contract are actually carried out. The mere term "independent contractor," does not, per se, establish such relationship. It is not the *form* of the agreement, but the *substance*, which controls. Some of the attributes of an independent contractor relationship are: the salesperson is not required to follow any prescribed schedule of office work hours; is not required to meet a sales quota, attend office or sales meetings; there is no assignment of particular listings to such person; no specific time for duration of the relationship; no daily reports; salesperson assumes expenses of automobile, pays dues to

associations, pays license fees, pays for entertainment incidental to negotiating a sale; there are no fringe benefits; no income tax or social security withheld by broker.

The broker, under the independent contractor arrangement, can provide office space, telephone and stenographic services. The broker is obligated to pay the agreed-upon commission, when it is received by the broker. In the case of *Bidwell v. Iowa Employment Security Commission* involving an unpaid contribution, under the Iowa Employment Security Law, the Commission held that the real estate salesman was an independent contractor (1973).

An early case in support of the independent contractor concept is the case of *Dimmitt-Rickhoff-Bayer Real Estate Co. v. Finnegan*, 179 F. 2d 882 (Mo. 1950). In that case, the Court found that salesmen for the plaintiff broker were not required to report to the broker's office daily, or at weekly salesmen's meetings, and were not required to keep fixed hours, and plaintiff merely made available office facilities and listings, assisted salesmen and divided commissions, and furnished a booklet of instructions. These facts did not constitute salesmen as "employees" of the plaintiff, so as to make remuneration of salesmen subject to federal employment taxes.

A recent Court opinion also in favor of the independent contractor concept is the case of *Dept. of Employment v. Bake Young Realty*, 560 P. 2d 504 (Idaho 1977). In reversing the Industrial Commission, the Supreme Court held that "real estate salesmen are engaged in an independent occupation and thus are not 'covered' employees for purposes of the state's Employment Security Act."

The Court also relied upon the rationale in the case of *California Employment Stabilization Commission v. Morris*, 172 P. 2d 497 (1946), which also involved a real estate salesperson; *Moore v. Idaho Employment Security Agency*, 367 P. 2d 291 (1961), involving a salesman selling shares in mutual funds. The Idaho Court subscribed to the view, espoused in the case of *Realty Mortgage and Sales Co. v. Okla. Employment Security Commission*, 169 P. 2d 761 (Okla. 1946), that the association of broker and salesperson "is in the nature of a joint venture, in which each party to the arrangement makes certain contributions and performs certain services in order to produce a result mutually profitable to them Each performs his function, and receives his remuneration, not from the other, but from a third party"

Contrariwise, it has been contended that certain criteria establish that, in fact, the salesperson is an employee; to wit, the real estate license is in the custody of the broker, displayed in the broker's office; renewal license application is handled by the broker; very often the salesperson has a drawing account; transfer of license from one broker to another broker by approval of the Real Estate Commission stymies the salesperson's freedom of doing business with brokers at large; initially, the salesperson must obtain recommendation of the *particular* broker with whom he will be associated exclusively.

A case that adopts the employer-employee rule is the case of *Hughes v. Industrial Commission*, 551 P. 2d 962 (Ariz. App. 1976), holding that real estate salespersons are employees for purposes of the Workmen's Compensation Act. The Court emphasized the fact that it is the *right* to control and not the *exercise* of control that determines status.

Thus, with divided opinion as to a salesperson's status—whether employee or independent contractor—the line of distinction is by no means certain. Courts and government agencies may take a longer look as to the actual facts in each *individual* case. Legal and accounting counsel is recommended.

Federal anti-trust actions against real estate boards

In recent years, the United States Department of Justice (Anti-Trust Division) has filed suit against a number of metropolitan real estate boards alleging that a board's rule that its members should follow, in practice, the recommended schedule of commission rates constitutes an illegal practice. A number of real estate boards have entered into consent decrees, agreeing to discontinue any schedule of commission rates and further agreeing that between broker and owner the matter of commissions should be *negotiated*. A related case, *Oglesby and Barclift, Inc. v. Metro MLS, Inc.*, CCH TRR, Section 61,064 (Va. 1976), held MLS arrangements illegal; treble damages were awarded.

EXCLUSIVE RIGHT TO SELL LISTING CONTRACT

Dated ... April 1, 1978 ...
at Pittsburgh, Pennsylvania

Listing Price: \$39,000
Between Roland Z. Brady, single, Owner and
.....
REALTY SALES COMPANY, 755 Fourth Ave., Pittsburgh, Pa. for the sale of real estate at
1101 Riverview Ave., Pittsburgh, Pa. 15217

In consideration of \$1.00, receipt whereof is hereby acknowledged, and other valuable consideration, the undersigned Owner hereby employs REALTY SALES COMPANY as the sole and exclusive agent irrevocably for a period of three (3) months from the date hereof, with the exclusive right for the sale of premises described on the reverse of this contract, and which data constitutes a material part of the contract of employment, and agrees to pay said REALTY SALES COMPANY a commission, which has been negotiated and agreed upon at seven (7) per cent on the gross consideration price or at any other terms and price accepted by the Owner, upon the sale, exchange or transfer, or upon the exercise of an option to purchase clause in a lease, whether made by myself or by any other person for and during the above-mentioned term of employment, or any extension or renewal thereof.

The authority of REALTY SALES COMPANY shall terminate at the expiration of the above term, unless renewed, without any further liability on the part of the owner unless the sale, transfer, lease or exchange of the above property is made or effected directly or indirectly by me, the undersigned owner, or through any other person within a period of six (6) months from the expiration of this employment contract or any extension or renewal thereof, to any person or persons with whom REALTY SALES COMPANY has been negotiating or dealing for the sale, lease, transfer or exchange of said property, and whose name has been filed with me, no later than June 30, 1978, in which event, the owner agrees to pay REALTY SALES COMPANY the agreed-upon commission, which shall become immediately due and payable.

If said property is withdrawn from sale, is transferred, conveyed, or leased without the consent of the agent, or is made unmarketable by my voluntary act, the agreed-upon commission shall become due and payable forthwith.

The owner (s) agree (s) that he (they) is (are) the sole owner (s) and agree (s) to discharge all encumbrances and remove all clouds on the title, unless assumed by the buyer, and to convey title by (general) warranty deed.

(special):

I hereby authorize said REALTY SALES COMPANY to place a "For Sale" sign upon said property, which shall be the only such sign displayed thereon during the term of this contract or any extension or renewal thereof.

All earnest deposits paid upon the purchase price shall be held by the agent in an escrow or trust account until consummation of the deal or termination thereof.

In event said deposit money or any part thereof is forfeited as liquidated damages, such sum or sums shall be divided equally between broker and owner. However, broker shall not receive any sum greater than the agreed-upon commission.

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS AUTHORIZATION TO SELL CONTRACT.

..... Roland Z. Brady (SEAL)
Owner

REALTY SALES COMPANY
by Marie E. Baier (SEAL)
Broker

This contract is hereby renewed and extended upon the same exclusive right to sell terms and conditions for a period of from 197 ... to 197 ...

..... (SEAL)
Owner

REALTY SALES COMPANY
by (SEAL)
Broker

A-1(a) SIMPLE LISTING CARD

LISTED	District ... Squirrel Hill ... Date Listed April 1, 1978
BY	Constr. & Design Brick
Office	Rooms, 1st Floor ... 3 ... 2nd ... 3 ... 3rd ... None
	Bath tile Shower yes Breakfast Room, Sun Room No
	Hardwood Floors yes Double yes Water Heater Galv. Insulated yes
	Heating System ... Hot Air ... Coal ... Coal & Fruit Cellars ... yes ... Plumbing ... Galv.
CLASS	Screens ... yes ... Weather Stripped ... yes ... Concrete Porches
..... 4	... yes ... Roof ... asb. slat Copper Gutters ... Spouting ... Galv. ...
..... 3	General Condition ... good ... When Built ... 1950 ... Builder
..... 2	G.C. Carson ... Garage ... Integral ...
X..... 1	Lot Size 75 × 150 Level Slopes rear
	Alley ... yes ... Paved Street ... yes ...
	Assessment ... \$12,000 ... Taxes: City ... \$200 ... School ... \$310 ...
	County ... \$180 ... Total ... \$690 ...
	Mortgage ... \$18,000 ... Monthly Payment ... \$200 ... Interest Rate ...
	7% ... Mortgage ... City Bank ...
	Rental ... Owner occupied ... Tenant ... Phone ... Sale Clause ... Place
	Sign ... yes ...
	Special Features Possession July 1, 1978
	Directions
	Price ... \$39,000 ... Address ... 1101 Riverview Ave., Pittsburgh, Pa., 15217
	Title in name of Roland Z. Brady, single

I hereby represent and warrant the above information to be true and correct.

Roland Z. Brady
Owner

Mortgage Brokers

Mortgage brokers in a number of states—California, Connecticut, Florida, Illinois, Michigan, Mississippi, New Jersey, New York, North Dakota, Pennsylvania and Wisconsin—require a real estate broker's license. Absence of a license is fatal to the recovery of a commission. In Louisiana, Massachusetts, and the provinces of Alberta and Ontario, a mortgage broker must obtain a license from the Securities Commission.

In the Louisiana case of *Webster v. Rushing*, 304 So. 2d. 66 (La. App. 1974), the plaintiff, who was not registered, failed to recover a \$25,000 commission for negotiating a \$2,500,000 loan upon an apartment building complex. The Court also pointed out that he could not recover on a quantum meruit basis, since he was acting in violation of the law.

It should also be noted that Nebraska, to date, is the only state that requires *appraisers* to be licensed under a *separate* statute.

Federal open housing legislation: anti-discrimination

In recent years, repeated crises have plagued many of our large cities, and small ones, too. Riots, "sit-ins," racial incidents, dissatisfaction with the war in Vietnam, strikes by school teachers and public employees, together with other factors, have all contributed to some extent to crime, violence and disorders. Many books have already been written as to the underlying causes and suggested remedies. Poverty and discrimination are always given as basic causes from which crime and violence erupt. City, state, and federal programs, combined, were found wanting as a cure to the nation's ills. Equally important as a basic cause of the nation's turbulent times is racial discrimination in the housing field, particularly against black citizens, although other minority groups are also affected.

Under the President's Executive Order of November 20, 1962, housing that related to or was aided by Federal assistance came under an anti-discrimination mandate. The Order included new F.H.A. or V.A. mortgage construction, public housing, housing assisted through urban renewal, and Federally owned housing. Since then, statutes have been passed in a number of states, augmented by ordinances in some cities, making it illegal to discriminate against a purchaser on the grounds of race, color, religion, national origin or background. These regulatory measures vary as to their provisions and effectiveness.

On April 11, 1968, President Johnson signed an open housing law that is vitally important for all those in the housing and mortgage business. The law prohibits racial discrimination by most sellers and renters of dwellings, and also bans discrimination by all those who make loans to buy or improve residential property. For sellers and renters, the law takes effect in three stages, but for lenders its effective date was Jan. 1, 1969. The agency charged with administering and enforcing the law is the Department of Housing and Urban Development (HUD); the Department of Justice will also play a role in those instances where violations reach the courts.

It is important to note that, by some state statutes, or by amendment to existing state license laws, conviction of a real estate broker or salesman as being a party to a discriminatory act constitutes grounds for disciplinary action by the Real Estate Commission.

The problem of housing is nationwide, and the states look to the Federal Government for leadership and guidance in alleviating the complex difficulties. The Congress acted and passed the Open Housing law, which was signed by the President on April 11, 1968. A capsule analysis of the important provisions of the law fol-

lows (taken from Prentice-Hall, Inc.—*Federal Aids to Financing Report*, with permission):

The law prohibits discrimination on the grounds of race, color, religion, or national origin in the sale, rental, or financing of dwellings. This includes setting harsher terms for publishing discriminatory advertising, telling a person that a dwelling is not available for sale or rental when in fact it is, or “block-busting” (attempting to get a person to sell or rent by representations that people of a particular race, color, religion or national origin are entering or are about to enter the neighborhood).

The law became effective in two stages:

(1) In 1968, it banned discrimination in the sale or rental of housing insured or guaranteed by the Federal Government or located in a Federally assisted urban renewal or slum clearance project. The ban applies to all such housing backed by the Government after November 20, 1962 (the date of the Executive Order banning discrimination in government-backed housing), unless payment was made before the date of enactment, namely, April 11, 1968.

It also covers dwellings owned or operated by the Federal Government and dwellings built with the aid of loans, advances, grants, or contributions made by the Federal Government.

(2) Effective January 1, 1969, the ban applies to all dwelling units, no matter how financed, with these two exceptions:

(a) Single-family homes, provided the owner does not own more than three single-family homes at one time. If the owner is a non-occupant of a single-family home he sells, he gets the exemption for only one sale within a 24-month period. (b) One-to-four family dwellings, if the owner occupies one of the units.

Loans: Also effective January 1, 1969, banks, savings and loan agencies, mutual savings banks, insurance companies and other lenders cannot discriminate in making loans on apartment buildings or homes—whether for purchase, repairs, or construction. Also forbidden is discrimination in setting the terms of the loans, such as the amount of the mortgage, the interest rate, and so on.

Enforcement of the Act is in the Secretary of Housing and Urban Development (HUD). The Secretary, or his assistant, is limited in his powers in handling complaints to “education, conciliation, and persuasion.” In this connection, he can investigate complaints, issue subpoenas, and hold hearings, before issuing a final order. He cannot issue a “cease and desist order,” nor fine an offender. For punitive damages for violation of the law, a complainant must file a suit in a Federal district court. If there is a “substantially equivalent” local or state fair housing law, the Federal Court generally will direct that a complaint be filed in the state or local forum.

The law gives the government the right to inspect the records of anyone charged with discrimination.

In addition to the enforcement provisions, the Attorney General can bring action in cases where there is a general pattern of discrimination or an issue of general public importance.

On June 17, 1968, the United States Supreme Court handed down its landmark decision on open housing, in the St. Louis case of *Jones v. Mayer Co.*, 392 U.S. 409 (decided June 17, 1968), involving the purchase of a homesite in a subdivision called Paddock Woods. The Supreme Court held that an Act of Congress passed in 1866 forbade racial discrimination in the sale or rental of housing in the United States. In a majority (7-2) opinion, Mr. Justice Potter Stewart said, *inter alia*,

Negro citizens North and South, who won in the Thirteenth Amendment a promise of freedom—freedom to go and come at pleasure and to buy and sell when they please—would be left with a mere paper guarantee if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man.

The Act of 1968 contains many exemptions, including specifically single-family residential units sold without an agent. The Act of 1866 contains no such exemption and it lacks the federal enforcement machinery and other remedies available under the 1968 Act.

The law is comparatively new and it is not yet court tested as to any ambiguities or conflicts in its provisions, particularly in its relationship to the Act of 1866 and the recent Supreme Court decision. A number of legal experts are in accord that the Supreme Court opinion in the Jones case has the effect of eliminating the several exceptions contained in the Act of 1968, without voiding the law itself. In support of this view, they call attention to the language of the 1866 Act, which states:

All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

It would appear that a party plaintiff could petition for injunctive relief in a federal district court, on the basis that there is no irreconcilable conflict between the Act of 1968 and the Act of 1866. The total effect of the Supreme Court decision is to bring all property, personal as well as real, under anti-discriminatory regulation. In real estate, the decision creates an "open housing" law throughout the country. However, it should be noted that buyers or renters can still be rejected for reasonable cause, but the grounds for rejection must apply equally to *all* persons.

Damages for racial discrimination in Housing Market: *Clark v. Universal Builders, Inc.*, 501 F. 2d. 324 (7th Circuit), 88 Harvard Law Rev. 1610 (1975). Discrimination on basis of income: *Boyd v. Lefrak Organization*, 509 F. 2d. 1110 (N.Y. 1974).

The Fair Employment Practices Act is a segment of legislation designed to protect individuals from discrimination because of their sex, age, religion, race, color, national origin, or ancestry: *Evening Sentinel v. National Organization of Women*, 357 A. 2d. 498 (Conn. 1975).

A city has authority to adopt a Fair Housing Ordinance: *Chicago Real Estate Board v. City of Chicago*, 224 N.E. 2d 793 (Ill. 1967).

Blockbusting

The federal provisions on fair housing are further buttressed by state acts, particularly in the area of anti-discrimination measures. A segment of discrimination appears in the practice of "blockbusting," or panic peddling. This is an overt act on the part of a real estate broker to put pressure on owners of dwellings to sell their properties because of a threat that the neighborhood is being infiltrated by minority persons. It is an effort to create panic selling, prohibited by the Fair Housing Act.

In the case of *People, etc. v. Betts Realtors, Inc. et al*, 361 N.E. 2d 581 (Ill. 1977), a prosecution was brought against a broker, charging unlawful solicitation for sale of residential property after receiving notice from the owner that he did not desire to sell or be solicited for such sale. The Illinois Supreme Court, in the above case, held that an act designed to prevent "blockbusting," or panic peddling, is constitutional and no longer open to question. The Illinois act also made it unlawful "to solicit any owner of residential property to sell or list such residential property after such person or corporation has notice that such owner does not desire to be solicited to sell

or list for sale such residential property.” The Court rejected defendant’s argument that the act was “an unconstitutional limitation of free speech, and that the right to engage in commerce and to earn a living is an unlawful investiture of legislative power, and is otherwise unconstitutional.”

Questions on Brokerage

1. Q. Name four ways by which the relationship between broker and owner can be terminated.
 - A. Performance, death, rescission, bankruptcy.
2. Q. Name three (3) events that determine how long a broker may hold deposit money in his escrow account.
 - A. Date when transaction is consummated; the seller refuses to sell; the deposit money is forfeited by the buyer.
3. Q. An owner listed a property with a broker at \$3,200,000 and agreed to pay a commission of \$50,000, if sold. About three (3) weeks later, the broker procured a prospect at \$2,900,000. Later, a letter from the broker to owner stated, "If a sale is consummated at a *higher* price than above, we will then *negotiate a reasonable and appropriate commission* to be paid." The property was sold to the broker's prospect at \$2,850,000. The broker sued for a commission of \$50,000. Decide.
 - A. In favor of the broker. The court held that the letter was not a waiver of the \$50,000 in the listing agreement. There was no *new* consideration "to negotiate a reasonable and appropriate commission": *Guild Management Co. v. Oxenhandler*, 541 S.W. 2d. 687 (Mo. 1976).
4. Q. Jackson has an *oral* listing in Nebraska, for Stanton's property. He negotiates a sale to Crawford at the listed price. The agreement of sale contains a clause recognizing Jackson as the broker and acknowledges a commission to be paid to him by the seller. Later, Stanton refuses to pay. Can Jackson recover?
 - A. Yes. Even though Jackson does not have the required written listing, Jackson can recover on the theory that the broker is a third-party beneficiary: *Mid-Continent Properties, Inc. v. Pflug*, 249 N.W. 2d. 476 (Neb. 1977).
5. Q. Name ten (10) incidents that would help establish a real estate salesperson as an independent contractor, rather than an employee of the broker with whom that person is associated.
 - A.
 1. Pays own license fees.
 2. Pays dues to a real estate organization.
 3. Operates own automobile, pays for gasoline, insurance, repairs and license fees.
 4. Does not maintain any fixed hours or scheduled hours for work.
 5. Not required to meet a sales quota.
 6. Not required to file daily reports.
 7. No fixed time to take vacation.
 8. Files his own income tax return.
 9. Has no fringe benefits.
 10. Pays for entertainment of prospects.
6. Q. Is there any economic justification for a real estate broker?
 - A. Yes, services have value as much as productive goods such as food or clothing.
7. Q. What is the relationship between broker and owner?
 - A. Principal (owner) and agent (broker) relationship.
8. Q. Is a salesperson's relationship to the broker one of master and servant (employer—employee), or independent contractor?
 - A. The relationship is determined by the *substantial* content of the contract between

the broker and salesperson. Under the master—servant relationship, the salesperson would usually be required to attend office meetings and file daily reports. Car expense would be assumed by the employing broker, as well as license fees and entertainment, etc. As an independent contractor, the salesperson's time is his own.

9. Q. In order to recover a real estate commission in court, what must a broker first aver in the complaint and prove?
A. That he was a duly licensed broker.
10. Q. What two other averments must the broker prove?
A. He was employed by the owner.
He was the efficient and procuring cause of the sale or lease.
11. Q. What states, at the present time, do not require a license in order to operate as a broker?
A. None.
12. Q. How many provinces in Canada do not require a broker to have a license?
A. None.
13. Q. Daisy Reston, single, lists property for sale on January 2, 1978 with Bennett Realty, at \$18,500. She marries Henry Boyd on February 28, 1978. Bennett obtains a cash offer of \$18,500 on March 21, 1978. Henry refuses to sign the sales agreement. Can Bennett recover a commission from Daisy?
A. Yes. The property was owned by Daisy alone when it was listed. The broker performed his part of the contract in full; the marriage, after the listing, has no effect.
14. Q. Can Henry Boyd be sued as a defendant in the preceding case?
A. No; since he was not a party to the listing contract.
15. Q. Can both Daisy and Henry be jointly named?
A. Yes, but the suit would be dismissed as to Henry.
16. Q. C.D. Sloan owns a vacant commercial building in a downtown area. He places a large sign reading "For Sale or For Rent, Call 261-1225" or "SEE YOUR BROKER." Randolph, a prospect, contacts a broker, Marlin, who calls Sloan and obtains the terms of sale. Later, a sale is made by Sloan to Randolph at \$72,000. Marlin claims the usual commission of 7 per cent in that area. Can he recover?
A. No. The statement "See Your Broker" does not establish a contract of employment between Sloan and Marlin. In states requiring a listing contract to be in writing, Marlin, of course, could not recover.
17. Q. In how many ways may a broker establish a contract of employment?
A. 1. by express contract.
2. by ratification by the owner.
3. by conduct of the parties.
18. Q. A county board of Realtors restricted membership in its multiple listing service to brokers "primarily engaged in the real estate business." An application of a part-time broker for membership was refused on that account. The board was charged with violation of the state's anti-trust law. It was contended by the board that the exclusion promoted higher ethical and professional standards. Is the board's by-law valid?
A. No. The by-law against part-time brokers is invalid. It must yield to anti-trust laws where "the association has the power to shape and influence the economic environment of its particular market": *Marin County Board of Realtors v. Paulson*, 549 P. 2d 833 (Cal. 1976).
19. Q. Adams employed the Boston Auction Company to sell his residence at auction. The auctioneer announced that "broker participation" would be allowed if the broker had registered his client with "us," if his party was the successful bidder. A broker, Clark, registered the successful bidder with the auctioneer, who refused to pay any commission. Clark sued Adams. Can he recover?
A. No. There was no privity of contract between Adams and Clark. The auctioneer had no authority to bind the owner.

20. Q. Broker Jones secures an oral listing from seller, MacDonald, to sell his house for \$17,500; agreement to terminate in 30 days, commission to be 6%. Jones secures a buyer for the property at \$17,500. The owner refused to permit broker to complete sale and completes it himself. Jones demands his commission. Can broker recover?
- A. In those states which require a listing contract to be in writing, he could not recover. In the other states, he could recover.
21. Q. A broker is employed by a wife to sell her real estate; he secures a buyer on her terms; the husband refuses to sign the contract of sale and the deal falls through. Is the broker entitled to a commission from the wife?
- A. Yes. He has fully performed his contract of employment since he produced a purchaser, ready, able, and willing to buy. However, if he had good reason to believe that the husband would not join in the contract of sale the decision would be different.
22. Q. An owner gives an exclusive listing to broker Abel for a six months' period. During the exclusive period, he gives a nonexclusive listing to Kane, who produces a buyer. What is the owner's liability for commission?
- A. He is obligated to pay full commission to both Abel and Kane.
23. Q. A salesman is assisted in a deal by another salesman employed by another broker. The first salesman pays one-half of his commission to the salesman who assisted him. Is this legal?
- A. No; the salesman has no right to recognize anyone other than his employing broker. The latter should deal and recognize the other broker and not the other broker's salesman.
24. Q. Why does an exclusive right to sell listing contract afford the broker more protection than an exclusive listing?
- A. Full commission is assured the broker, regardless of who sells the property during the term of the listing.
25. Q. Assuming you are a broker and discover you have obtained an exclusive right to sell contract from a property owner who is incompetent. What are your rights in enforcing this contract?
- A. None. Contract is void.
26. Q. If you have a property listed for sale and find a prospect who is willing to take an option on the same at the terms offered, are you entitled to your commission?
- A. No. An option does not bind the purchaser to buy, and the broker is entitled to his commission only if the option is exercised.
27. Q. If you listed a house for sale, which had wall to wall carpeting in the living room and hall, would you make reference to the carpeting in your listing?
- A. Yes. A statement in listing may save argument and perhaps loss of sale later.
28. Q. Name five methods by which an agency may be terminated.
- A.
1. By agreement between principal and agent.
 2. By expiration of the term.
 3. By extinction of subject matter.
 4. By death of either principal or agent.
 5. By incapacity of either principal or agent.
29. Q. A broker is employed by the son of A and B, husband and wife, to sell the parents' real property. The mother has authorized the son to list the property but the father has not. The broker secures a buyer on the exact terms of the listing; the father refused to sign an agreement of sale and the deal falls through. Can the broker recover a commission?
- A. The broker can recover from the mother since the son was her authorized agent. Or, the broker could sue the son, who gave the listing, as he represented he was duly authorized to do so. He could not recover from the father.
30. Q. Cook, a salesman employed by Ajax Realty Co., negotiated a sale of real estate. The owner refused to pay the commission and the firm declines to sue. Cook sues the

- owner. Can he recover?
- A. No; the broker can only sue his principal (the owner).
31. Q. A broker claimed a commission for procuring a purchaser for an owner's property. He obtained a buyer. When the deal was closed, title was taken in the name of the father of the purchaser and the property leased to the son. Can the broker recover a commission?
- A. Yes, the broker clearly made the deal and the arrangement for taking title would not defeat his earned commission.
32. Q. William Rushton, a broker, had an exclusive listing on Andrew Erbel's home, which expired on August 30, 1977. Before the listing expired Rushton procured Frank Stone as a prospect. On August 16, 1977, Erbel *leased* the property to Stone for six months and on December 6, 1977 signed an agreement to sell him the property. Is Rushton entitled to a commission?
- A. Yes; it appears that the lease was merely an arrangement to circumvent the commission claim and that the parties to it did not act in good faith.
33. Q. The National Insurance Company owned a farm. Wilson, a broker, offered to trade an apartment house, listed with him for sale, for the farm. He dealt with Alberts, treasurer of the Company. The treasurer stated: "We want high class apartment property." The broker replied "All right, sir, I will see what I can do." An exchange was made through another broker. Can Wilson recover against National Insurance Company?
- A. No. There is no express or implied contract of employment. It would appear that plaintiff was representing the apartment building owner, since the Insurance Company had not listed the farm with him.
34. Q. A property was listed with James who was not licensed but who obtained his broker's license before he rendered any services. Two days after he received his license he negotiated a real estate deal. Can he be prosecuted?
- A. Yes. Since James did not have a license when he obtained the listing he was acting in violation of the license law.
35. Q. Ahern lists property for sale with Brett, a broker, at \$6,000. Brett purchases the property in Cobb's name and sells it to Simmons for \$7,500. Brett collects a commission from Ahern of \$300. Later Ahern discovers the real facts. What redress does he have?
- A. He can recover the \$1,500 profit and, in addition, can recover the \$300 commission paid to Brett. The broker forfeits his right to a commission because of his duplicity.
36. Q. Aiken lists property for sale with Benson, a broker, at \$8,000, the broker to receive a commission of five per cent. Benson procures a buyer who refuses to pay more than \$7,500. Two months later the deal is made at \$7,500 and Benson claims \$375 as commission. Aiken refuses to pay, claiming the listing was at \$8,000. Can Benson recover?
- A. Yes. The courts will not permit an owner to take advantage of a broker's efforts and then turn him "out of doors." The agent here was still the efficient and procuring cause of the sale.
37. Q. Bowles, a broker, was employed by Archer to sell three lots for him. It was not an exclusive agency. Bowles procured Mrs. Crane who was acting for herself and her husband. Each purchased one lot, as did Drake, whom Mrs. Crane had informed that the lots in question were for sale. Bowles sued Archer for a commission on the sale of all three lots. Can he recover?
- A. Bowles can recover commissions only upon the sale of the two lots to the Cranes. The broker was in no way directly connected with the sale of the lot to Drake. The law deals only with proximate and not remote causes.
38. Q. The plaintiff broker, Bender, "worked upon" one Collins and induced him to look at property owned by Allen, listed with Bender for sale. Collins finally decided not to buy himself, but upon Collins' advice, Collins' brother bought directly from the

owner, Allen. Is Bender entitled to a commission on the sale?

- A. No. In the absence of collusion or fraud, the plaintiff was not the procuring cause of the sale to Collins' brother.
- 39. Q. Jones gave Peters an exclusive listing upon his property at \$9,000. The agreement was for a term of 3 months at 5 per cent commission. The agreement provided for termination after the term upon 30 days' written notice from the owner. "In default of such notice, this exclusive contract shall renew itself from term to term as an exclusive contract. . . until notice herein provided shall be given to terminate." The agreement was dated November 28, 1977. Notice of termination was given on May 16, 1978. The property was sold by the owner, Jones, on July 26, 1978. Is the broker entitled to his commission?
 - A. Yes. The written notice of termination given May 16, 1978 was too late to terminate the contract during the term in which it was given. It operated to terminate the listing as of August 28, 1978. Inasmuch as the property was sold on July 26, 1978, Peters was entitled to his commission.
- 40. Q. Smith, a minor, employs Black to sell a piece of real estate which he owns. Black, dubious as to Smith's age, makes inquiry. Smith misrepresents his age to be 25 years. After Black sells the property, Smith disaffirms the contract of employment and refuses to pay Black any commission. Can Black recover?
 - A. No. Black's suit in assumpsit (upon a contract) is against an infant upon a *voidable* contract. Smith cannot make himself of age by misrepresenting his age. He is still an infant in fact and the law permits him to plead infancy as a defense. An infant is liable for deceit, which is a tort (an actionable wrong) action. Black could sue Smith in a trespass action upon the tort.
- 41. Q. Andrews, an owner, wrote Burns, a broker, "You might proceed and sell the entire 13 houses separately for \$50,000 net cash to me. Your commission of 3% to come out of the last sale made." The houses were sold by Burns for an aggregate amount of \$50,000. Andrews refuses to pay any commission. Can Burns recover?
 - A. No. The broker is not entitled to any commission unless the sum received exceeds the specified "net" price, the word "net" meaning that which remains after deducting all charges such as commission.
- 42. Q. Flynn, a broker, asks Dubbs, an owner, the price of his house, and introduces him to a client, who subsequently purchases it. Can he recover a commission?
 - A. No. Even though he may have, to some extent, influenced the sale, he cannot recover, because he cannot prove an employment. "How much do you want for it?" does not constitute employment.
- 43. Q. Arthur listed property for sale with Blaine at \$12,000. Blaine negotiated a sale to Clancy, who paid \$1,000 down. After the agreement of sale is signed, Arthur obtains a memorandum from Blaine that "commission is to be paid at the time of settlement." Settlement is never made due to mutual releases by seller and buyer. Can Blaine recover from Arthur for commission?
 - A. Yes. There was no legal consideration for the promise to wait for his commission until the date of settlement. The mutual releases do not absolve the seller from payment of a commission, already earned.
- 44. Q. Woods mails a description of his property to Talley, a broker, with a request that he sell it at \$18,500 cash. Nothing is said about commission. The broker obtains a buyer at \$18,500 cash. There is an argument about paying a commission. Can Talley recover?
 - A. Yes. There is an implied promise to pay the usual commission, since the broker obtained a satisfactory buyer upon the seller's terms. He could recover on a "quantum meruit" basis, what he deserves, which would be the usual commission.
- 45. Q. A salesperson, Beard, employed by Broker, Clayton, has a drawing account of \$50 per week against future commissions, his automobile carries a large sign on the roof "Clayton—Licensed Real Estate Broker," and his renewal license fee is paid by Clayton. Would these facts establish an employee or an independent contractor

status for Beard?

- A. The facts stated would be strong evidence of an employee status.
- 46. Q. If a salesperson is considered an independent contractor, name two important advantages to the broker.
 - A. Broker would not carry workmen's compensation insurance; would not require income tax and social security payments by the broker.
- 47. Q. An extender clause in a listing contract required the broker to file the names of the prospects with whom the broker negotiated during the original period of the listing by December 29, 1977. The broker mailed a list of his prospects on December 24, 1977. Due to a delay of the postal service, the letter was not delivered to the owner until January 3, 1978. The property was sold to one of the broker's prospects on February 15, 1978. The broker sued for commission. Can he recover?
 - A. No. "Filing with" is not the same as "mailing to." The burden was on the broker to make sure that his list of prospects reached the owner by December 29, 1977.
- 48. Q. Alicia Turner is employed as a bookkeeper-clerk by Adam, a builder. The builder told her that he would give her incentive pay of \$300 for each lot she sold for him. Alicia, who is not licensed, sold two lots, one in November and one in December 1977. Adam goes out of business in December 1977, and refuses to pay her. Can she recover?
 - A. No, since absence of license is fatal to her claim.
- 49. Q. Name three events which determine how long a broker may hold deposit money.
 - A.
 1. Until the transaction is consummated.
 2. Until deposit is forfeited by buyer.
 3. If the seller refuses to sell, deposit money must be refunded.
- 50. Q. A broker obtained an exclusive right to sell listing for six months from February 15, 1978. He did not advertise the property, nor did he make a diligent effort to obtain an interest buyer. On May 15, 1978, the owner terminated the listing by a written notice. Was this proper?
 - A. Yes. The broker had a reasonable time to manifest his good faith intention to perform: *Atkinson v. Zarenich*, 80 P. 2d 110 (Cal. 1933); nominal damages only.
- 51. Q. Young is a tenant of Fox for certain premises used as a variety store. Young lists the business for sale with Boone, a real estate broker. Boone advertises the business for sale and interests Dunn, a prospective purchaser. Dunn and Young call upon Fox for the purpose of transferring the lease, but Fox refuses, and as a result Dunn purchases the building from Fox. Can the broker, Boone, recover a commission from Fox?
 - A. No. In the first place Boone cannot establish a contract of employment with Fox, and, in the second place, Boone was not the direct proximate cause of the real estate sale.
- 52. Q. Benson, a broker, obtained an inquiry from Mann for certain industrial real estate, at a purchase price of \$20,000. Benson had the same property listed with him by Ambers, the owner, at \$14,000. Benson informed Ambers that he himself would purchase the property at Ambers' price. Agreements were signed and Benson assigned the agreements to Mann. Ambers sues Benson for \$6,000. Can Ambers recover? Is Benson entitled to a commission on the \$20,000 deal?
 - A. Ambers can recover. Benson is not entitled to any commission. An agent is a fiduciary. He owes a high degree of loyalty to his principal. He cannot make a secret profit at the expense of his principal. Since Benson offered to buy the property *after* he had a purchaser at a higher price, he forfeits his rights to a commission.
- 53. Q. The real estate broker's license of Adams expired on December 30, 1977. On January 6, 1978, he negotiated a sale of property listed in his office at a price of \$40,000. He did not renew his license until January 27, 1978. The owner refused to pay a commission and Adams sued. Can he recover?
 - A. No. The broker is not entitled to compensation on a transaction negotiated after his license has expired and before renewal license was issued.

54. Q. Peters gave Brent an exclusive agency to sell his real estate for \$8,500. The contract is dated February 28, 1978. It runs for 6 months and then indefinitely as an *exclusive agency* unless terminated by 30 days' written notice from the owner. After procuring a few prospects in March 1978, nothing is done by Brent upon the listing. Peters sells the property in July 1978, through another broker, Kane, to whom he pays the usual commission. Can Brent collect a commission?
- A. Yes. Although his right would appear unconscionable, the exclusive listing "ran on" until Peters took the necessary steps to cancel it, by giving Brent written notice to that effect. If the license law, or Rule of the Commission, requires a *definite* expiration date for the listing, Brent could not recover.
55. Q. Jones lists his property for sale verbally with three real estate offices. Brown, a broker, shows the property to Neil. Later Neil calls at the office of a second broker, Clark, who shows him several properties, including Jones's property. Neil tells Clark that he has already seen the property but Clark insists that he make another inspection. Clark calls Neil's attention to the construction, fixtures, and appointments. Neil is impressed and several days later calls at the house alone and gives Jones a check for \$500 on the purchase. The deal is closed. Jones pays Brown a one-half commission and pays Clark a one-half commission. Both Brown and Clark sue Jones. Who will win?
- A. Clark appears to be the broker who actually effected the sale. But the question of which broker is the efficient and procuring cause of the sale is a question of fact for a jury to decide. In claims from more than one broker, an owner should pay the money into court, so as to confine his liability to the payment of a single commission.
56. Q. A broker holds a license expiring on June 28, 1978. On July 3, 1978, he has not renewed his license. On that date, he negotiates the sale of property of an owner. Indicate by check-mark which of the following will apply.
- A. He is still registered _____ .
 The sale is illegal _____ .
 The broker forfeits his commission ____ X ____ .
 The registration of the broker may be revoked ____ X ____ .
57. Q. Name two persons to whom a broker may lawfully pay compensation for services in a real estate transaction.
- A. His licensed real estate salesman.
 A licensed real estate broker.
58. Q. In obtaining a listing of a residence for sale, name at least ten factors in regard to the property that a broker should include on his listing card data.
- A. Construction and design; layout of rooms and sizes; types of floors; baths; heating system; age of building; roof construction and spouting; size of lot; garage; taxes and mortgage data; amount of assessment; screens; weather-stripping; type of plumbing; special features.
59. Q. What is the legal terminology of the relationship between a broker and his client?
- A. Agency.
60. Q. Are these three reasons why a broker should obtain an exclusive listing?
- A. (a) Guarantees a broker he will earn a commission—Yes _____. No X.
 (b) Protects against other brokers stealing his prospects—Yes X. No _____.
 (c) Causes the broker to feel more secure—Yes X. No _____.
61. Q. If a listing does not state a definite expiration date, it may nevertheless be terminated in several ways. Name them.
- A. Performance, lapse of time, revocation, abandonment, renunciation. (In some states, listing is void.)
62. Q. Broker Smith gives you information concerning one of his listings and you sell the property. Should you negotiate through Smith or directly with the owner? Why?
- A. With Smith, because he has the only legally enforceable contract of agency employment.

63. Q. What is the difference between a "Realtor" and a "Real Estate Broker" ?
A. A "Realtor" is a member of the local, state, and national real estate association. A "Real Estate Broker" is any licensed broker.
64. Q. Ash lists a property for sale with Burns on Jan. 16, 1978. Ash leaves for a 2-month vacation but dies while he is away. Burns, unaware of Ash's death, obtained a signed agreement for the property from Johnson upon Ash's terms. Ash's heirs refuse to honor it or to pay Burns a claimed commission. Can Burns recover?
A. No. Ash's death automatically cancelled Burns's employment. The fact that Burns was unaware of Ash's death is immaterial.
65. Q. Ahern lists his property for sale with Brown by telephone. Brown calls Foster's attention to the property by phone. Ahern and Foster are friends, and Foster has visited Ahern's home a number of times. When Brown calls Ahern's attention to Foster as a prospect, Ahern replies, "Oh, I talked to him about buying my property years ago." Later Ahern sells to Foster. Is Brown entitled to a commission?
A. Yes. He has brought the parties to an agreement. Although his services, measured in time, may not have amounted to much, yet he was responsible in bringing the parties together, which resulted in the agreement.
66. Q. Broker Jones had a property listed with his office in December 15, 1977. He showed it to Hensel and introduced Hensel to Dixon, the owner, on January 28, 1978, but did nothing more. The listing expired on February 15, 1978. Dixon sold the property to Hensel on March 25, 1978. Is Jones entitled to a commission?
A. No. Opening negotiations but failing to bring owner and prospect to an agreement is insufficient. Since the listing had expired when the agreement was made, the broker could not recover.
67. Q. Weston employs Richter to sell his property. The listing makes no mention as to who shall hold the deposit money. Richter obtains a purchaser on Weston's terms. Weston refuses to sign the contract of sale unless the deposit money is paid to him. Is his contention sound?
A. Yes. The listing should authorize the broker to hold the deposit money in his escrow account.
68. Q. Does the license law require a seller to permit the broker to hold any earnest money deposit in the broker's escrow account?
A. No. But the law requires deposit money *paid* to the broker to be deposited in an escrow account.
69. Q. What different types of listing are used in real estate practice?
A. Open listings (non-exclusive), exclusive, exclusive right to sell and multiple listings, net listings.
70. Q. Which type of above listing would give the owner the greatest opportunity to sell his property?
A. Under the multiple listing, since all members of the multi-list association would have the right to sell the property.
71. Q. Is it legal for a broker to purchase a property listed with his office for sale?
A. Yes, if the broker discloses all information to the owner, which might influence the owner's decision to sell.
72. Q. Does the law *require* a broker to obtain an earnest money deposit, in order to have a binding agreement of sale?
A. No, but the broker would be rendering a disservice to the owner, if he did not *request* a deposit commensurate with the sales price.
73. Q. A broker has been authorized by all parties involved to negotiate an exchange of certain properties. Would he be entitled to commission on all the properties in the transaction?
A. Yes. His dual employment is known and recognized by the parties involved.
74. Q. Jane Thomas, who generally conducted her father's (Tom Thomas's) affairs, gave Fair the sole agency for the sale of a lot. He placed his sign on it. This was done with the father's knowledge, and without objection. Jane referred a prospect to the

broker, stating that the matter was entirely out of her hands. Can Fair recover from Thomas upon a sale to the prospect?

- A. Yes. Under the doctrine of estoppel, the father is prevented from denying the authority of the daughter to list the property with the broker.
- 75. Q. Allen employed Black, a broker, to sell some investment property for him. Black obtained Clay as a purchaser. At the time of closing the deal it developed that the property did not have the rental income claimed by Allen, whereupon Clay refused to go through with the deal. Is Black entitled to a commission?
 - A. Yes. He complied with his contract of employment with Allen.
- 76. Q. A minor, Young, employed Bell to sell his property. Bell obtained a purchaser, Cooper, upon Young's terms, and Cooper made a substantial down payment. Young refused to accept the offer, stating that he had changed his mind. Can the broker collect a commission?
 - A. No. Who deals with an infant does so at his peril. The contract is voidable and may be disaffirmed by the minor.
- 77. Q. Miss Agatha Veblen listed property, which she had inherited, with Smith-Jones Realty Company. The next day, the firm produced a purchaser and Miss Veblen signed the contract of sale. Prior thereto, Miss Veblen married Anthony Taylor. At the closing, the husband refused to join in the deed and the deal fell through. Can the plaintiff broker recover a commission?
 - A. Yes. The broker acted in good faith, without any knowledge that the owner was married when she signed the contract of sale.
- 78. Q. A principal directs a broker to sell his property for \$50,000. The broker might have obtained \$50,000, but by collusion with the purchaser he sells it to him for \$40,000, with the consent of the owner, who knows nothing of the collusive agreement and is anxious to sell at any price. The owner, later learning of the broker's infidelity, refuses to pay him any commission. What are the rights of the parties?
 - A. The broker cannot collect any commission and the owner can recover from the broker any secret profit which the broker may have made in the transaction. The broker has violated his duty of loyalty to his principal and forfeits his rights to any compensation.
- 79. Q. Baker, a licensed broker, negotiated a real estate transaction to a purchaser referred to him by Calhoun, a registered engineer. The agreement of sale executed by the parties provided that $\frac{2}{3}$ of the commission was to be paid to Baker and $\frac{1}{3}$ to Calhoun. Suit was filed jointly by Baker and Calhoun but at the time of trial, Calhoun withdrew his suit. Can Baker recover?
 - A. No. Since the suit was a joint action and Calhoun was not licensed, this fact is fatal to Baker's action. It is obvious that both Baker and Calhoun were acting jointly in negotiating the sale. The fact that the owner was to pay $\frac{1}{3}$ of the commission directly to Calhoun is a mere subterfuge.
- 80. Q. Axford employs Bird, a licensed broker, to sell property for which he is to receive a specified sum as his commission. Without informing Axford, Bird also acts for the buyer, who also promises him a commission. When Axford discovers that Bird is acting for both parties, he goes through with the deal but refuses to pay the broker's commission. Bird sues. Can he recover?
 - A. No. A broker cannot represent both parties in the same transaction. The law does not permit a servant to serve two masters. The broker's employment by the seller is incompatible with his similar employment by the buyer.
- 81. Q. Under what circumstances, if any, may a seller impose the condition on a broker that he is to receive commission only in the event that the sale is consummated by the execution and the delivery of the deed?
 - A. Only if the condition is agreed upon before the broker has procured a bona fide purchaser for the property and a properly executed agreement of sale.
- 82. Q. Barnes, a broker employed by Arthur, procures an agreement of sale signed by Clark and upon the owner's terms of sale. However, the agreement provides for

closing the deal six months hence. Arthur has another purchaser for the property at the same price with the closing fixed for thirty days. Arthur refuses to sign Barnes' agreement. Is Barnes entitled to a commission?

- A. No. Six months is an unreasonable length of time for the closing, and Arthur is within his rights in objecting to the delay.
83. Q. An agreement of sale recited that the owner agrees to pay the broker a commission of \$9,000, pursuant to a listing agreement. In a suit where the purchaser failed to consummate the deal, the trial judge instructed the jury that it was their duty "to determine what amount of money was fair and reasonable to recompense her for her services." The jury awarded \$1,000. Was the court's instruction proper?
 - A. No; the broker was entitled to the commission agreed upon in the listing agreement: *Gaynor v. Laverdure*, 291 N.E. 2d 617 (Mass. 1973).
84. Q. A real estate broker is forced to sue to collect a commission that is due him. In addition to the facts setting forth his cause of action, what fact does the License Law require him to allege in his complaint and prove on the trial of his case?
 - A. That he was properly *licensed* as a real estate broker at the time the cause of action arose.
85. Q. In dealing with an officer of the corporate owner of commercial property listed for sale, what precaution should the broker take?
 - A. The broker should ascertain whether the officer of the corporation has been authorized by a resolution of the board of directors to list the property for sale.
86. Q. Can a broker's claim for commission be found upon an implied contract of employment?
 - A. Only in those states that do not require a listing contract to be in writing.
87. Q. Jones, broker, obtains an oral listing from Smith, to sell Smith's residence. Jones obtains a signed offer to purchase from Greene and before presenting the offer to Smith, goes to Smith and obtains a written listing from him. Two days later, agreements are signed by Smith and Greene. The sales agreement states that Smith owes Jones a 6 per cent commission. Can Jones recover a commission?
 - A. Yes. The post listing agreement, supported by the obligation of Smith to pay Jones a commission, would constitute ratification of Jones' employment.
88. Q. A broker negotiated an option to purchase real estate, which expired on May 15, 1978. On July 1, 1978, the optionee exercised the option and purchased the property. The broker claims a commission. Can he recover?
 - A. No. Since the optionee did not exercise his option prior to the expiration date, the option expired and the broker's rights terminated at the same time.
89. Q. A contract for the sale of real estate provides as follows: "The seller agrees that John Doe brought about this sale and agrees to pay him the broker's commission of five hundred dollars." Subsequent to the execution of the contract, John Doe, in a conversation with the seller, states that he will not claim his commission unless title is actually closed. Thereafter, and prior to the date set for the closing of the title, John Doe demands his commission from the seller who refuses to pay, claiming that John Doe was not entitled to a commission until the actual closing of title. Who will win?
 - A. John Doe, the broker, will win as his commission was earned when he produced a purchaser ready, able, and willing to buy upon the seller's terms upon the execution of the sales agreement. There was *no* consideration for Doe's promise to wait until the closing for his commission.
90. Q. Bell listed his property for sale with Abbott on January 4, 1978 for a six-month period at \$40,000, with commission at 7%. Three months later, the state condemned the property, but before condemnation was completed, and within the listing period, the state offered Bell \$40,000 and he accepted. The broker is claiming a 7% commission. Decide.
 - A. The broker cannot recover. The broker was in no way responsible for the sale.
91. Q. What protection does a written listing give an owner?

- A. The terms of the contract, such as expiration date and commission, are clearly defined so that controversy and litigation can be avoided.
92. Q. May a real estate broker or salesman pay a portion of his commission to an unlicensed person for his assistance in a sale?
- A. No. It is unlawful.
93. Q. Broker Carroll has an exclusive listing on certain property from an owner and receives an unsolicited bona fide offer from Broker Woodruff. He refuses to submit the offer to the owner on the grounds that his exclusive agency does not obligate him to deal with or through any other broker, and that the prospect must deal with him directly and not through any other broker. Is he correct?
- A. No. The broker is obligated to submit any offer or information which he may have regarding the subject of the agency. While Carroll may refuse to split a commission, his duty to his principal requires him to divulge the offer through Woodruff. The owner may decide to pay each broker a full commission.
94. Q. Abel listed his property with broker Berm at \$15,500. Berm receives an offer of \$10,500 from a prospect. Should he ignore the offer or obtain a deposit from the prospect and communicate it to Abel?
- A. He should accept the deposit and advise Abel of *all* information which has come to his knowledge. It is up to the owner to accept or reject the offer.
95. Q. If the broker or salesman selling a property is the owner thereof or has an ownership interest therein, should that fact be disclosed to the purchaser before the latter obligates himself to buy?
- A. Yes. A broker or salesman is not permitted to act as an undisclosed principal in a real estate transaction, whether it be as purchaser or seller.
96. Q. Smith is employed as a real estate salesman by Brown, a broker. While so employed, he attempts to sell Albert's property to Cox. A few days later, Smith and Brown "fall out" and Smith resigns from Brown's employ. Smith's license is returned to the Real Estate Commission for cancellation. He then makes a connection with the real estate office of Edwards. After applying for a transfer of license to Edwards, but before the new license has been issued, Smith negotiates and concludes the sale of Albert's property to Cox. Is Brown, Smith or Edwards entitled to a commission?
- A. No one is entitled to a commission under the law. Since Smith's contract with Brown was terminated, he had no license in force when the deal with Cox was made. Smith had no assurance that the transfer of license to Edwards would be made. The salesman must be licensed whenever negotiations for the sale of real estate are carried on.
97. Q. A salesman in the employ of a real estate broker put through a sale. He demanded commission on behalf of his firm and the seller refused to pay it. His employing broker refused to be involved in litigation regardless of the merits of his claim. Thereupon the salesman sued the seller in his own name. Can he recover?
- A. No. A salesman usually has no standing in a court of law; an action for commission must be instituted in the name of the broker employed by owner.
98. Q. Adams employed Bell, a broker, to sell his property. Parker employed Cross, a second broker, to buy property in the neighborhood. Parker contacted Bell and persuaded Bell to help him buy Adams' property, Bell to "put the pressure" on Adams. Bell was to receive a commission from Parker and to split the commission which Parker paid Cross. Adams signed the agreement of sale. When Adams discovered these facts, he refused to perform the contract. Will he succeed?
- A. Yes. The collusion between the purchaser and Bell to take an unfair advantage of Adams will defeat any rights that Bell might otherwise have against Adams. The broker, Bell, forfeits any claim to commission.
99. Q. Jones gives you an exclusive listing on a home; you procure a buyer, ready, willing, and able. You now discover that Jones does not own the house but that his brother does. May you recover your commission from Jones?

- A. Yes. You have fulfilled the terms of your contract with Jones. By holding himself out as the owner, Jones is liable.
100. Q. Blake, a broker, sells a parcel of real estate for Young, an infant, aged 17 years and 10 months. Later, Young disaffirms the contract of sale. The broker demands that Young pay him the commission and upon Young's refusal institutes suit for payment. Can Blake recover?
- A. No. The contract was voidable at Young's option, and he was, therefore, within his legal rights in disaffirming it.
101. Q. Harris, broker, obtained a purchaser, and a \$500 deposit, on an "open" listing. The listing was for \$12,000 and the buyer agreed to pay \$11,200. Before the owner, Grant, would sign the agreement, he had Harris write in, "Commission to be paid when deal is consummated." The buyer moved to Detroit and defaulted. Grant sold the property through another broker. Can Harris recover?
- A. No. Failure of the buyer to close the deal, without any fault of the seller, relieved the seller under the special terms of the contract from liability for the commission.
102. Q. Enumerate five duties which an agent owes to his principal.
- A.
1. Loyalty to his trust.
 2. Must obey instructions.
 3. Must account for money and property.
 4. Must not be negligent.
 5. Must act in person.
103. Q. Under what circumstances, if any, may a broker recover a commission from both buyer and seller?
- A. A broker can recover a commission from both parties when:
1. He is employed by both parties.
 2. He merely brings the parties together.
 3. Nothing is left to his discretion.
 4. No special confidence is reposed in him.
 5. The fact that he is acting in a dual capacity is known to both parties.
104. Q. Who is a broker-salesperson?
- A. A broker-salesperson is one who holds a broker's license, but is acting in the capacity of a salesperson for another licensed broker. A broker-salesperson is not permitted to have a trust account, as all funds belonging to others must be handled through the main broker's trust account.
105. Q. The substance of a purchaser's complaint is: "Five months ago, I gave a broker a \$1,200 deposit for the purchase of a house, which he owns. The deal was to be closed one month later. He is out when I call and never returns my calls. I have visited his office four times and I have waited an hour for him each time, but his secretary keeps telling me he is expected back soon. I think he is evading me. What should I do?"
- A. Three avenues of relief are open: (1) File a complaint with the Real Estate Commission. (2) File a complaint with the Consumers Bureau. (3) Sue in a justice of the peace or a similar court tribunal.
106. Q. A tenant in an apartment building obtained a tenant for a three-bedroom unit in the building, upon the owner's promise to pay him a \$250 fee. After the lease was signed with the new tenant, the owner reneged on his promise. The tenant sued. Can he recover?
- A. No. Since the tenant is not licensed, this is a fatal bar to a recovery.
107. Q. Thompson, a licensed broker, agreed to divide a commission with an attorney, who referred a prospect to him. Later, the broker refused and the attorney sued. Can he recover?
- A. No. Since the attorney does not have a real estate license, he cannot recover. Also, the broker would jeopardize his license by paying a commission to an unlicensed person.
108. Q. The listing contract provided for a six months' "carry over" clause—if property

was sold for \$65,000 to a buyer procured by the broker, he was entitled to a commission. During the six-month period, the property was sold for \$45,000 through another broker. It was established that the plaintiff broker presented no offer to the owner, but he had submitted the property to the ultimate purchaser during the original term of the listing; but, he did not offer \$65,000. Can the broker recover?

- A. No. The broker did not *procure* an acceptable buyer. He cannot recover a commission for an independent sale at a later date to the prospect for a substantially lower amount than that quoted by the owner.
109. Q. Fordham desires to list his property for sale with you at \$38,000. Before accepting the listing, you make a careful appraisal of the property and it amounts to \$29,500. You offer to list it at \$30,000. The owner insists on listing it and advertising it at \$38,000, and agrees to pay the advertising costs. Should you accept the listing?
- A. No. An unrealistic listing will not sell and the broker will save time and effort by not accepting the listing.
110. Q. Should a broker keep his commissions in his trust account at all times?
- A. No; only until the particular deal is closed.
111. Q. What points should an exclusive listing cover?
- A. Description of property, price, terms, encumbrances, definite period for which listing is binding, agreement to pay a commission in case of sale, exchange or lease.
112. Q. David A. Stone lists his property for sale with the Rogers & Co. at \$14,500. The only offer Rogers receives is \$7,700, cash, from Adams. Rogers states, "It would be an insult to even submit such a ridiculous offer." Two months later, Stone sells directly to Adams at \$7,700. When Rogers finds out, he sues for a commission. Can he recover?
- A. No, he was not the efficient and procuring cause of the sale. He was duty bound to submit the offer to Stone.
113. Q. Hill is looking for a commercial property in the retail district of Phoenix. He contacts the A. L. Weaver Co., and promises Weaver that he will pay him \$5,000 if he can locate a satisfactory site. Six suitable properties are listed for sale with the Weaver Agency, including property of Wilson Heirs. Shortly thereafter, a sale is made by the Wilson Heirs, owners, to Hill. Weaver demands the \$5,000 from Hill, which is refused. Can he recover?
- A. No. The broker's employment by the Wilson Heirs precludes any recovery from Hill.
114. Q. In the above case, can he recover from the Wilson Heirs?
- A. No. The broker's attempt to collect a commission from both parties in the same transaction impinges upon his duty of loyalty to either party.
115. Q. An orange grove was listed by the owner, Margaret O'Neill, with the Citrus Realty Co., at \$125,000. Citrus obtained a signed offer to purchase at that price, with a \$2,500 earnest money payment, from Home Fruit Co., a Florida corporation. The agreements were signed on February 15, 1978 and the deal was to be closed on March 15, 1978. Home Fruit Co. was unable to obtain financing, because of a bad credit rating and a bankruptcy proceedings in 1977. Is the broker entitled to a commission?
- A. No. The broker must produce a purchaser of *substance*, or one able to command the necessary money to close the transaction.
116. Q. Henry Colt was licensed in Texas as a real estate broker, as an attorney, and as an engineer. A Dallas property was listed with his office for sale. He negotiated the sale between the seller and buyer. The seller refused to pay any commission since the listing was not in writing as required by Texas law. Can he recover?
- A. No. Since he was acting exclusively as a real estate broker, the listing had to be in writing.
117. Q. How, if at all, should a broker go about negotiating a sale of property listed exclusively by another broker?

- A. Contact the listing broker and operate through him as a co-broker.
- 118. Q. A broker holding a listing on a property secures a deposit from a prospect. The buyer signs four copies of the Agreement and one copy is left with the buyer. What two steps should he take next ?
 - A. 1. Deliver three copies to seller for signature.
 - 2. If accepted, leave one signed copy with the seller, deliver one signed copy to buyer, and retain one for himself.
- 119. Q. What is the difference, if any, between a "client" and a "customer" ?
 - A. A customer transacts business with a real estate broker in one transaction. A client is one who retains services of broker to represent his interests in real estate.
- 120. Q. A broker fails to renew his license by July 1, 1978. Then he continues to operate and does not renew his license until July 14, 1978. On July 5 he completes a transaction and retains his commission. The owner of the property demands that he receive the full amount including that portion retained by the broker for his commission. Can a broker collect a commission under these circumstances?
 - A. No. He was not licensed and not legally operating as a licensed broker at the date the sale was made.
- 121. Q. Tucker, a broker, sees a "For Sale" sign on Boyer's home and brings Davis, a prospective purchaser, to the property and introduces him to Boyer. Davis buys the property and Tucker claims a commission. Will he recover?
 - A. No. Tucker is a "volunteer" and cannot show a contract of employment with the owner. Boyer may well believe that Tucker was the agent of Davis.
- 122. Q. Smith, a broker, has a customer for a warehouse. He contacts an official of a manufacturing building and inquires if the company will consider the sale of one of its buildings. The officer replies in the affirmative and states a price of \$30,000. Smith introduces his customer to the official and later a sale is made. Is the broker entitled to commission from the company?
 - A. No. The broker is unable to establish that he was employed by the seller, which is a prerequisite to recovery; or, that the official was authorized to act for the corporation.
- 123. Q. In the general function of an appointed property manager are a number of specific duties. List briefly the specific duties which you consider the most important.
 - A. 1. Determine proper schedule of rents.
 - 2. Secure desirable tenants.
 - 3. Collect rentals.
 - 4. Render service; provide for building maintenance and repairs.
 - 5. Keep adequate accounts.
 - 6. Study to increase efficiency.
 - 7. Assist in planning space, etc.
- 124. Q. A broker obtained a written contract of employment from an owner on January 3, 1978, which provided: "This agency shall continue 30 days from date hereof and thereafter until three days have elapsed after receipt of written notice from the Owner, terminating this agency, sent by registered mail, or delivered in person to said agent." On June 6, 1978, the legislature passed an act which provided that the practice of demanding or receiving a fee under agreements which contain no definite termination date is ground for revocation of a license. The question arose whether the act was retroactive so as to invalidate the agency employment. Decide.
 - A. The act is operative. The general rule is that the legislature cannot pass a law which impairs the obligation of a contract. The California appellate court held that it is equally well settled that the legislature, in the exercise of its police power, may regulate the conduct of business, and every contract is made in subordination to that authority and must yield to its control.
- 125. Q. What is a listing?

- A. A detailed record of property listed with a broker for sale or rent; the contract of employment between owner and broker.
126. Q. A prospect desires to purchase property listed with a broker at \$26,000 and proposes two offers, one at \$23,000 and the second for the full price of \$26,000. The second offer is to be submitted, however, only in the event that the owner rejects the first offer. Should the broker take two offers in this matter?
- A. No. He must be loyal to his principal and should inform the prospective purchaser that he can only submit the offer at \$26,000.
127. Q. Why should a broker purchasing a property from an owner disclose his personal purchase?
- A. Acting as a principal is incompatible with a broker's employment as an agent in a fiduciary capacity.
128. Q. A broker has a 30-day exclusive listing. He advertises the property extensively at his own expense, but is unable to produce a buyer within 30 days. Two days after the exclusive expires, the seller negotiates a deal direct. The broker sues for a commission on the grounds that the deal had been made as a result of his advertising. Can he recover?
- A. No. This is a risk which the broker assumes when he advertises and is unable to obtain a buyer during the period of his exclusive agency.
129. Q. Adams gives Bair a written exclusive listing for 60 days. Adams dies during the 60-day period. Is the agency cancelled?
- A. Yes. Death automatically cancels the agency, unless it is coupled with an interest.
130. Q. Adam Blake is licensed as an individual broker. He obtains a listing from Joe P. Brown on January 4, 1978. He then decides to incorporate. A charter is granted on February 17, 1978 and all of the assets of Blake (including listings) are transferred to the corporation, Enterprise Realty Co. A sale of the subject property is made on March 15, 1978 and a license is issued to the corporation on March 17, 1978. Brown refuses to pay any commission. Can Blake, individually, or the corporation recover?
- A. No; the corporation, not Blake, made the sale. The corporation was not licensed when the sale was made.
131. Q. Is it good practice to include the "carry over" clause in a listing contract that "if the property is sold within 6 months to any person to whom the broker showed the property," the broker is entitled to a commission?
- A. No. The broker might be the procuring cause of the sale without ever actually showing the property to a prospect.
132. Q. If the listing contract is ambiguous, how will the courts construe it?
- A. Most strongly against the broker, because he prepared it.
133. Q. In the "carry over" clause in a listing, various terms are used such as "any person with whom you had negotiations," "submitted the property to," "had contact with," "showed the property to," "on information given, received, or obtained through this agency," "to any prospect secured by you," or "to any person with whom you have been dealing." Which of the above terms are acceptable from the standpoint of fair practice?
- A. "With whom you had negotiations."
134. Q. Kentucky requires a listing contract to be in writing. Plaintiff broker sued for a \$750 commission and relied on a *sales* agreement signed by the seller and buyer, which contained a printed clause that the property was sold "through Bud Hamilton Realty Auction Co." Could the plaintiff recover on this writing as a contract?
- A. In the case of *Hamilton v. Booth*, 332 S.W. 2d 252 (Ky. 1960), the Court held that broker could not recover on this writing between seller and buyer.
135. Q. Nebraska requires a listing contract to be in writing. A contract of sale contained a clause, "I further agree to pay the above named agent the cash commission agreed upon in the amount of \$3,500." At the bottom left-hand side, underneath Witness, broker signed "Bill B. Svoboda." Does the broker have a written contract of em-

- ployment?
- A. Lower court held against broker. The Supreme Court reversed: *Svoboda v. DeWald*, 159 Neb. 594 (1955). The appellate court found that the writing complied with the requirements of the Statute, in that (1) it was in writing; (2) contained a description of the property; (3) commission to be paid; and (4) it was signed by the parties.
136. Q. A property is listed with a broker at \$12,000. He feels it is a bargain and after one week, he has an agreement of sale signed by his wife's mother. The broker has no buyer in mind at that time. Six months after the deal is closed, the broker sells the property for \$14,000. Is the broker guilty of misconduct?
- A. Yes; in failing to disclose his true interest in the transaction. There is nothing wrong in a broker buying property listed with him for sale, if he feels it is a good buy, so long as he acts "above board" and lets the owner know his true position in the situation.
137. Q. Steiner owned a property upon which there was a mortgage, delinquent in a large amount. He gave an exclusive right to sell on the property to Stoner for 90 days, hoping to salvage something from a sale. During the 90-day period, the owner and the mortgagee resolved their differences by having the owner give the mortgagee a voluntary deed in return for a cash payment of \$500. The broker claimed a commission on the value of the property (listing price). Could he recover?
- A. Yes; the Court held that it was a voluntary sale based upon a valuable consideration, so that the broker was entitled to his commission.
138. Q. Woodruff gave a six months' exclusive listing on his property to Woodring. During the exclusive period, the state instituted condemnation proceedings against the property and made an award of \$40,000. Is the broker entitled to a commission?
- A. No; it was an involuntary sale, for which the owner was in no way responsible.
139. Q. Hoyle lists his property for sale with Doyle, a good friend, who is a member of a multi-list association. It is sold by Boyle, a fellow member. Upon Hoyle's refusal to pay the commission, Boyle sues him. Can he recover?
- A. No. There is no privity of contract (employment) between Hoyle and Boyle.
140. Q. What is meant by the "carry over" or "extender" clause in an exclusive contract?
- A. It is the clause which reads, in effect, that if a sale or exchange is made within six (6) months after the exclusive period has expired, to any person with whom the broker had been negotiating, he is entitled to his commission.
141. Q. Would it be proper for a real estate salesman to negotiate for the sale of property with the parents of minors who are lawful owners?
- A. No. The proper party with whom to negotiate would be the guardian of the minors.
142. Q. On or about April 26, 1978, the owner listed his property for sale exclusively until "on or about the 15th day of June" on which date defendant anticipated removing with his family to Miami, Florida. Plaintiff advertised the property and showed the property. On May 20th, it was sold through another broker. Is the plaintiff entitled to recover a commission?
- A. Yes. (*Werder v. Browne*, 78 GA. App. 587.) The Court held that the alleged date on which the contract was to come to an end was not so vague and indefinite as to render the contract void and unenforceable. The date of removing to Miami was a definite time capable of being sustained by proof.
143. Q. Plaintiff broker sued for \$2625 commission in connection with the sale of a motor court on U. S. Highway, south of Savannah. The broker failed to plead that he was a licensed broker. Was this fatal to his claim?
- A. Yes. (*Lynes Realty Co. v. Mays*, 80 Ga. App. 4.)
144. Q. Should a listing contract authorize a broker to sign a binding contract of sale for the owner?
- A. No, except under very unusual circumstances.
145. Q. An exclusive listing of a house is obtained by Adam Boyer and/or Fairplay Realty

Company, a corporation, on April 3, 1978 for 3 months. Boyer is licensed at the time but the corporation (Boyer, president) is not licensed until May 12, 1978. The property was sold on May 10, 1978. Boyer sued for commission on the sale. Can he recover? Reasons.

- A. No; the listing is *several* and since the corporation was not licensed when the deal started, neither the corporation nor Boyer can recover.

146. Q. A licensed broker sued an owner for a commission upon an employment contract that the seller was to obtain “\$125,000 cash or better, or \$125,000 with *reasonable* financing.” The broker obtained a responsible buyer who was willing to pay \$55,000 cash and execute a \$70,000 mortgage, payable within 15 years, with interest at 5%. The seller refused to accept the deal. Is the broker entitled to his commission? Discuss.

- A. Yes; broker’s deal would constitute “reasonable financing.”

147. Q. An owner gave an exclusive listing to a licensed broker to sell his property for \$100,000, with a cash payment of \$29,000 and “terms to suit.” The broker produced a buyer who agreed to pay \$5,000 down, \$24,000 in cash at the closing; purchase money mortgage for the balance. The owner refused to sign the agreement and the broker sued for commission. Can broker recover commission?

- A. No; terms are “to suit” seller. He need not be satisfied with any deal broker negotiates. The contract is too indefinite.

148. Q. Fred Lane signs an exclusive right to sell listing with the Rucker Agency on April 10, 1978 for a period of three months. During the exclusive period, Lane sells the property himself. Rucker sues for a commission. Lane defends on the grounds that it was verbally agreed between him and Rucker that if he sold the property himself during the exclusive period, no commission would be due Rucker. Is this a good defense?

- A. No. Under the Parol Evidence Rule, oral testimony cannot be introduced to vary or contradict a written instrument, except for fraud, accident or mistake. Lane would have to allege and prove that the oral understanding was fraudulently omitted from the written listing.

149. Q. Stone, a broker, sues both the seller, Adams, and the buyer, Baker, for commissions in an exchange deal. Baker admitted that he knew of the dual employment. Adams emphatically denied knowledge. The broker claimed that both parties knew of the dual agency and there was no unfairness, double dealing, fraud or damages to the parties. Can the broker recover from Adams; can he recover from Baker?

- A. He cannot recover from either. The rule of law is that a broker cannot recover from either of his principals unless *both* had knowledge of, consented to and acquiesced in such dual employment.

150. Q. Broker Hayes negotiated a deal between Stevens, seller, and Todd, buyer. After the agreements were signed, Hayes gave Todd permission to fill in some of the subject property, which was to be used for parking. The deal fell through and Todd now sues Hayes for \$725, cost of fill in and paving. Can he recover?

- A. Yes. Hayes is a special agent, with only limited authority to obtain a buyer. He exceeded his authority when he authorized the buyer to fill in and pave the lot. He is personally liable for the buyer’s expense.

151. Q. Eaton lists his property for sale with Foster for \$15,000. After some efforts, Foster is unable to sell the property and he then offers to buy the property at \$14,000. Eaton agrees to sell at that price. Within three weeks, and before the deal is closed, Foster sells the property for \$24,000. After both deals are closed, Eaton learns of the \$24,000 sale, and sues Foster for the profit. He claims that the broker made an unconscionable profit, was guilty of bad faith and breached his duty of loyalty to his principal. Can he recover?

- A. No. The parties acted as principals. So long as the agent did not conceal anything from his principal while he was acting as an agent, he owes no duty to the former owner after he acquires ownership in good faith.

152. Q. Alberts owned a vacant tract of land. He arranged with Bates, a broker, that the latter would have the engineering work done to lay out the land into a 40-lot subdivision. Bates was to have the exclusive sale of the lots for a three-year period. At the end of the first year, few lots have been sold and Alberts desires to terminate the agency. Can he do so?
A. No. The agency is coupled with an interest and cannot be revoked; even if Alberts died during the three-year period, the agency would still continue.
153. Q. What is the function of the real estate broker or salesperson?
A. To bring about an agreement of sale between his principal, the owner, and a third party, the purchaser.
154. Q. What is the difference between a "finder" and a broker?
A. A "finder" merely brings a buyer to the attention of an owner while a broker *negotiates* a sale to a buyer for the owner.
155. Q. Is it necessary for "a finder" to have a state license?
A. No; if he "remains pure" in abstaining from any negotiations between owner and purchaser.
156. Q. Must such an arrangement between owner and "finder" be in writing in order to be enforceable?
A. No.
157. Q. Must there be an express contract, oral or written, between owner and the "finder" ?
A. Yes; since any suit for a "fee" would have to be based upon a contract.
158. Q. Is there any difference between a "volunteer" and a "finder" ?
A. Yes; a volunteer negotiates between owner and prospect, but he cannot recover any commission, because he cannot prove he was employed. A "finder" locates a prospect for the owner, and does nothing more, but a sale is made. However, there must be an understanding (contract) between owner and "finder" for payment of a "fee."
159. Q. Ideal Printing Co. listed its plant for sale with Stan Weber, Realtor, at \$180,000. Weber produced a buyer, Moore Mfg. Co., Inc. President of this firm is Frank Miller, who is a brother-in-law of Weber, and general manager is James Collins, who is now married to Weber's mother. Weber does not disclose these facts to the officers of Ideal Printing Co. The transaction is made at \$175,000. When Weber claims a 6 per cent commission, Ideal refuses to pay and Weber sues. Decide.
A. In the absence of any bad faith, or undue pressure on the part of Weber, he would not be violating his duty of loyalty to his principal, and he could recover a commission under the facts stated.
160. Q. Why should the broker who negotiates a sale, include a clause in the agreement of sale to the effect that his commission is due and payable by the seller?
A. The broker is a third-party creditor-beneficiary and the clause would protect his claim for commission, even if the listing is verbal.
161. Q. Dorr listed his property for sale with Dawson Realty on February 1, 1978, for 60 days, at \$45,000, with commission at 6 per cent. The listing contains a clause that if the owner withdraws the listing before the expiration date, or transfers the property, he will be obligated to pay Dawson the commission. Dawson advertises the property immediately and shows it to four prospects who answered the advertisement. On March 2, 1978, Dorr called Dawson and told him to "take the property off the market" as he did not want to sell. Dawson sued. Can he recover?
A. Yes. There has been partial performance of the contract by Dawson. It is too late for the owner to withdraw the listing. The owner's agreement to pay a commission upon prior withdrawal, obligates him to pay the broker the agreed-upon commission.
162. Q. What is the important factor in determining whether a licensed salesperson is an independent contractor or an employee of the broker?
A. The amount of control the broker exercises over the salesperson. The potential for

liability is great for both persons, as the resulting effect of damages in a negligence suit may be substantial: *Gipson v. Davis*, 215 Cal. App. 2d 190 (1963).

163. Q. A large number of states, including California, require a listing contract for real estate to be in writing. A California broker had an exclusive listing on a property that had expired. Later, the owner erected a sign on the property, which read: "For Sale—Contact Your Local Broker." The broker then embarked on an extensive series of negotiations with a potential buyer, a cemetery operator. In order to avoid payment of a commission, the cemetery had a third party purchase the property from the vendor, and later transfer it to the cemetery. The broker sued for a commission. Can he recover?
- A. Yes. The appellate court so held in the case of *Buckaloo v. Johnson*, 537 P. 2d 865 (Cal. 1975). A party who suffers loss of an advantageous contract should recover damages for intentional interference in a *tort action* when the defendant interferes with a prospective contractual relationship.
164. Q. Property is owned by James Webster and Charlotte Webster, by the entireties. Due to family discord, James moves and lists the property for sale with Steve Sands. Sands obtains a bona fide purchaser, who signs an offer to purchase at the listed price. Charlotte refuses to sign the sales agreement. Sands sues for a commission. Can he recover?
- A. No. Since Sands knew or should have known of the couple's marital difficulties, Sands should have had Charlotte sign the listing. Since she refuses to sign the sales agreement, Sands is precluded from recovering a commission.
165. Q. If an employment contract between broker and salesperson states, "This contract represents, and the parties mutually agree, that the party of the second part (salesperson) is an independent contractor and not an employee of the party of the first part, and this contract shall be interpreted by the law applicable thereto," does this clause establish an independent relationship?
- A. No; the courts look to the *substance*, and not merely to the language of the instrument.
166. Q. Filbert lists his home for sale with Adams, at \$18,000, commission of 7 per cent, upon a sale. The listing is for 90 days, with an extender clause of 90 days. Adams has been unable to make a sale during the original listing period, but has his mother-in-law buy the property one month later for \$17,000. Three days after the closing, she deeds the property to Adams and his wife and moves in with them. Under these circumstances, can Filbert recover the commission paid to Adams at the closing?
- A. Yes. Adams was duty bound to disclose all of the facts in the case to Filbert, and he failed to do so.
167. Q. Under the above facts, if Adams had told Filbert that he would buy the property himself if Filbert would reduce the price to \$17,000, would Filbert have any action against Adams?
- A. No, since the parties were dealing at "arm's length," and Adams had no ulterior motive, such as reselling the property at a higher price to a prospective buyer, already obtained.
168. Q. On November 6, 1977, Baer, a broker, negotiated a sale for \$60,000, closing to be made on May 1, 1978. The buyer, Cole, gave Baer a deposit check for \$6,000. The broker deposited the check in an interest-bearing savings account, which he opened at that time. Is the broker entitled to the interest?
- A. No. The broker is required to deposit the money in his escrow or trust account. In the absence of any agreement between the buyer and seller regarding this matter, the interest would belong to the seller.
169. Q. If a listing agreement has a printed heading, "EXCLUSIVE LISTING AUTHORIZATION," and in the body of the listing contract a clause stating that the owner gives the broker "the exclusive right of sale," could the broker recover a commission, if the owner himself sold the property during the listing term?

- A. No. The listing contract is ambiguous as to whether it is an exclusive agency contract, or an exclusive right to sell contract. Since the broker prepared the listing, the ambiguity will be construed against him, and he cannot recover: *Bourgoin v. Fortier*, 310 A. 2d 618 (Maine 1973). See also *Dorman Realty and Ins. Co., Inc., v. Stalvey*, 212 S.E. 2d 591 (S.C. 1975).
170. Q. (a) Name three types of properties generally exempt from municipal and county taxation.
 (b) Can a broker recover a commission upon sale of exempted property?
- A. (a) 1. Charitable institutions.
 2. Educational institutions.
 3. Religious institutions.
 (b) Yes.

True and False

(Answers to this section are on pages 688-689.)

1. The law of brokerage is a combination of the Statute of Frauds and the law of equity. T F
2. A sign, "For Sale—See Your Broker," constitutes employment of any broker who produces a prospect. T F
3. "Puffing of goods" constitutes an actionable wrong. T F
4. Two or more persons must be involved together in an act of conspiracy. T F
5. Owner and buyer, to evade a broker's commission, could both be sued by the broker. T F
6. Fraudulent conversion occurs when a salesperson fails to turn over an earnest money deposit to employing broker. T F
7. A salesperson who negotiates a sale has the right to sue the owner if his commission is not paid. T F
8. Where the broker's scruples preclude a suit for commission, the salesperson who made the deal can sue in his (or her) own name. T F
9. A salesperson who takes a listing should sign it, rather than the broker. T F
10. A salesperson should maintain an escrow account for earnest money deposits. T F
11. A salesperson should open a trust account immediately upon receipt of license. T F
12. The salesperson who attends the closing of the transaction, is the one entitled to the commission. T F
13. Where salespersons from three different real estate offices negotiate with the same prospect, the one who obtains the buyer's signature to an agreement is always the one entitled to a commission. T F
14. The license law provides that a salesperson is an independent contractor. T F
15. A broker may pay a fee to an unlicensed person who only solicits listing by telephone. T F
16. A person who collects rents for an owner of an apartment building and only shows vacant units must be licensed. T F
17. A clerical assistant of a broker, unlicensed, can sell only one vacant lot per annum for pay. T F
18. There is economic justification for a real estate broker. T F
19. In relation to a broker, the owner is the principal. T F
20. A salesperson is the agent of the owner. T F
21. Preparation of a listing contract constitutes the unauthorized practice of law. T F
22. "Negotiation" of a commission is one of law and not of fact. T F
23. A broker's suit for a commission is brought in a court of equity. T F
24. A suit for a commission is a suit in assumpsit. T F
25. A broker's contract of employment with a salesperson must be in writing. T F

26. A listing contract given by a husband to a broker for sale of property owned by himself and wife will be binding upon the wife. T F
27. A listing contract for a farm is not in the same form as the listing contract for a dwelling. T F
28. Where a prospect answers a broker's advertisement and inspects the subject property, he is the broker's client. T F
29. A broker can maintain an office in his living room if the neighbors in the same block have no objection. T F
30. Where a property is listed for sale with several brokers, under an open listing, and the property is sold by one broker, the owner must immediately notify the other brokers that the property has been sold. T F
31. If a written listing contract does not state the commission in dollars or a percentage of the sales price, the broker cannot recover. T F
32. A broker obtains a buyer who executes an option on December 15, 1977, and signs an agreement to buy the property on January 25, 1978, at which date the listing had already expired. The broker can collect a commission on the sale. T F
33. An open listing can be given to more than two brokers. T F
34. The license law in many states provides that net listings are illegal. T F
35. A prospect of a broker is called a client. T F
36. Where a buyer exercises an option expiring January 21, 1977, on January 5, 1977, and signs a formal agreement of sale on December 1, 1977, the broker who negotiated the option is entitled to a commission. T F
37. Where a broker negotiates an option that is not exercised, he is, nevertheless, entitled to a commission upon the price paid for the option. T F
38. An exclusive right to sell listing for 30 days is preferable to an open listing for 90 days. T F
39. A broker's commissions stem mainly from residential sales. T F
40. A selling broker is a subagent of the listing broker in a multi-list. T F
41. The statute of frauds governs the relationship between broker and salesman. T F
42. The first essential in a suit for real estate commission is a state license. T F
43. A licensed broker may divide his commission with an unlicensed attorney, who cooperated in making the sale. T F
44. An exclusive listing contract for more than one year is void. T F
45. The broker generally pays for advertising a property for sale. T F
46. If a broker has an exclusive agency listing, he can recover a commission if the owner sells the property himself during the term of the listing. T F
47. A broker managing real estate is entitled to any secret rebates, so long as he does not pay more than the market price for any item. T F
48. The contract giving employment to the broker is known as the listing contract. T F
49. A salesman who leaves his broker, may take all of his listings to his new broker. T F
50. A licensed salesman may divide his commission with another licensed salesman with his broker's consent. T F
51. He could, with the *other* broker's consent. T F
52. A listing contract which authorizes the broker to sign a contract of sale for the seller is unusual. T F
53. A broker employing 10 or more salesmen must have a sales manager. T F
54. The principal in a listing contract is the seller. T F
55. The State Real Estate Board or Commission has authority to fix 6 per cent as the rate of commission on real estate. T F
56. A broker is obligated to advise a seller of his responsibility to pay such loan discount (points) as is imposed when the sales contract calls for F.H.A. or G.I. financing. T F
57. A listing contract without a definite expiration date is not valid in all states. T F
58. The duration of a listing contract, in the absence of a specified period, is determined by the Statute of Frauds. T F

59. "Earnest money" is the commission which the broker receives in the deal. T F
60. "Realtor" is the term used by a broker after he successfully negotiates a deal. T F
61. A contract between two brokers to cooperate on a real estate deal need not be in writing. T F
62. A broker may pay compensation only to his salesmen and to licensed brokers. T F
63. A straight salary may be paid by a broker to an unlicensed person who only solicits listings. T F
64. All listing contracts should be made in triplicate so that there are copies for the buyer, seller and broker. T F
65. The broker generally pays the fee for recording a deed. T F
66. The Real Estate Commission determines the rate of commission to be charged for selling real property. T F
67. A listing contract is ended if the salesman who obtained the listing dies. T F
68. An open listing is a listing in which the sales price is not set. T F
69. An "exclusive" listing is preferable to an "open listing." T F
70. A broker should close the deals negotiated by his salesmen. T F
71. An exclusive listing contract on real property would not be valid for a period longer than six months. T F
72. A seller can refuse to pay a broker an earned commission when he discovers that the buyer is also paying the broker a commission. T F
73. A salesman should understand the law of principal and agent. T F
74. A salesman, who solicits listings, but does not sell, is not required to have a real estate license. T F
75. There is no statutory lien for a broker's unpaid commission. T F
76. The usual "open listing" provides for the payment of a commission to the broker who lists the property first and an additional compensation to the broker who sells it. T F
77. A broker should deliver voluntarily a copy of the authorization-to-sell contract to the owner who signed. T F
78. A broker who has not been employed by the owner can recover a commission, if he obtains a buyer whom the owner accepts. T F
79. NAREB, Inc. does not prescribe commission rates for its members. T F
80. A listing contract might be renewed after its expiration date. T F
81. A broker may not represent more than one party to a transaction unless he so advises both of them and has their consent. T F
82. A broker who asks for a listing "until sold" offends good real estate ethics. T F
83. A listing contract is terminated by the death of the owner. T F
84. If a real estate broker has no written listing, he may collect a commission if he can produce two witnesses to the transaction. T F
85. The fact that the person who signed the listing did not own the property is no defense in an action for a real estate commission. T F
86. It is not important to specify the amount of commission to be charged for the sale of property because that is fixed by law. T F
87. It is unlawful to charge a commission for the sale of improved real estate in excess of 7 per cent of the sale price. T F
88. Commission for sale of real estate is determined by agreement between the parties. T F
89. A broker employed as a salesperson, should maintain a trust account for earnest money deposits paid to him. T F
90. An exclusive agency listing for 90 days is more beneficial to the owner than to the broker. T F
91. An unlicensed person may recover a commission in a single real estate transaction, if he has a power of attorney from the owner. T F
92. An "extender" clause in a listing is the same as a "carry over" clause in a listing. T F
93. A Real Estate Board in a metropolitan area can fix the commission rate for its

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| members to charge. | T | F |
| 94. Where a broker procures a buyer who has signed a firm agreement to buy but is unable to close the deal, the broker can recover commission from the buyer. | T | F |
| 95. Where a broker becomes a member of a real estate board, the salespersons automatically become associate board members. | T | F |
| 96. An owner gave an exclusive listing to a broker. The owner, during the listing period, sold the property through another broker. The owner is liable for two commissions. | T | F |
| 97. Procuring listings by house to house solicitation is beneath the dignity of a broker. | T | F |
| 98. It is unlawful for a real estate salesman to receive compensation for the sale of property from anyone except the broker with whom he is licensed. | T | F |
| 99. A salesman should advertise the sale of real estate in his own name. | T | F |
| 100. Placing "Sold" signs on property sold by a broker is one of the best ways of securing new listings. | T | F |
| 101. It is best that a broker accept nothing but exclusive right to sell listings. | T | F |
| 102. An exclusive agency is preferable to an exclusive right to sell contract. | T | F |
| 103. A salesperson leaving a broker's employ can recover from the broker commissions due, upon signed agreements, but not yet closed. | T | F |
| 104. A broker has the last word to decide upon commission controversies between two of his salespersons. | T | F |
| 105. The law obligates every agent to act in and for the best interest of his employer. | T | F |
| 106. A salesman selling his own property or that of the broker by whom he is employed should inform the prospective buyer of that fact. | T | F |
| 107. A person who answers the broker's ad and looks at the real estate with idea of purchasing same is the broker's client. | T | F |
| 108. Employment of a broker to find a tenant for real estate need not be in writing to be enforceable. | T | F |
| 109. A salesperson's principal is the broker-employer. | T | F |
| 110. A real estate broker is required to use ordinary diligence to keep his employer advised of his actions in the course of his agency. | T | F |
| 111. It is lawful for a broker to agree with the tenant of a house, which the broker has for sale, to pay the tenant a part of the commission if the tenant will show the property to any prospect of the broker who later buys the property. | T | F |
| 112. An exclusive listing and a net listing are the same and the terms may be used interchangeably. | T | F |
| 113. If an oral listing agreed upon has no expiration date, it remains in effect a reasonable time. | T | F |
| 114. A salesperson who negotiated a sale on his own, and received his full commission, is permitted to pay one-fourth commission to another salesperson in the same office, who obtained the listing. | T | F |
| 115. Where it is necessary to pay "points" in order to consummate the sale, the salesperson who made the sale should acquaint the owner with his obligation to pay the "points." | T | F |
| 116. If a broker has an exclusive agent agreement, he may recover a commission from the owner if the owner sells the property himself during the term of the listing. | T | F |
| 117. An "exclusive listing" means one confined to a single piece of real estate. | T | F |
| 118. An owner cannot refuse to sign a sales agreement when the broker employed by him obtains a buyer upon the seller's terms. | T | F |
| 119. A salesman cannot collect a commission in his own name and divide it with his broker. | T | F |
| 120. A real estate broker and a real estate salesman may not enter into a partnership. | T | F |
| 121. A principal is the employer of a broker. | T | F |
| 122. A broker's client and a broker's prospect are one and the same. | T | F |
| 123. A defrauded client has no right of court action against a broker but must sue the | | |

- surety company, if the broker is bonded. T F
124. Commission rates to be charged on real property sales are limited to a certain scale by the legislature. T F
125. If a broker has real estate for sale and finds a prospect willing to take an option to purchase the property at the price stated, the broker is entitled to a commission. T F
126. Commission rates are usually recommended by the local real estate board. T F
127. A salesman licensed under one broker may deal directly with another broker and obtain a commission from the second broker. T F
128. Under no circumstances can a broker collect a commission from the buyer. T F
129. In a disputed commission claim with an owner, the broker can insist that the matter be heard by the local real estate board. T F
130. The Real Estate Commission is the proper forum to decide real estate commission disputes. T F
131. Obtaining a listing by telephone may be hard to prove. T F
132. An exclusive listing refers to a single tract of land. T F
133. From the owner's standpoint, an exclusive agency contract is preferable to an exclusive right to sell listing. T F
134. It is unlawful for a broker to give part of his commission to the buyer for the purchase of a new electric range. T F
135. A real estate broker under an agency acts in a fiduciary relationship to his principal. T F
136. In real estate a broker usually acts for and on behalf of the owner or seller. T F
137. A listing contract must have a consideration in order to be valid. T F
138. The use of a listing form which also contains an option agreement between owner (seller) and broker is not considered good practice. T F
139. A net listing or an exclusive contract to sell a parcel of real estate at a net price to the owner makes the broker an optionee. T F
140. A broker accepting a net listing to sell a piece of real property should not accept any compensation from the purchaser unless he reveals this fact to the seller. T F
141. The listing agreement between broker and owner needs to be signed only by owner. T F
142. An agent is the "alter ego" of his principal. T F
143. It is proper for a broker to buy an interest in a property listed with him without making the fact known to the listing owner. T F
144. It is unlawful for a broker to purchase property listed with him in the name of a "straw" man. T F
145. Real Estate Commissions, by Rule and Regulation, require the broker to give the owner a copy of the signed listing, *at the time of signing*. T F
146. An agreement between brokers to split a commission need not be in writing. T F
147. A broker usually acts for and in behalf of the purchaser. T F
148. When no rate of commission is stated in a listing, and the property is sold, the usual or customary rate which is charged in that locality is used. T F
149. A listing obtained exclusively by one firm only for a limited period of time is called an exclusive listing. T F
150. If a salesman's name is used in advertising property for sale, the ad should also contain the name and address of the broker. T F
151. A real estate broker holding a 60-day exclusive agency to sell a parcel of real estate, may continue his efforts to sell such property even though the owner died during the 60-day period. T F
152. A real estate salesman, having consummated a sale of real property, has the choice of demanding his share of the commissions earned, either from the broker employing him or the seller, who for some personal reason refuses to pay the broker. T F
153. A real estate broker holding a 60-day exclusive agency to sell a parcel of real property may, without disclosing the relationships, sell the property to his wife

- and receive a commission for such sale. T F
154. A real estate broker is entitled to a commission for the consummation of a sale of real property upon the asking price set by the seller even though he was in a position to obtain another purchaser willing to pay more than the asking price. T F
155. An owner is under no obligation to pay a commission to the broker when it is ascertained, after the execution of the contract of purchase, that the purchaser was induced to enter into the contract of purchase because of some misrepresentations made by the broker. T F
156. Where a broker introduces a purchaser to an owner whose property is listed with the broker, the broker is entitled to a commission if a sale follows through direct negotiations between the principals. T F
157. Price of the listed property determines whether the listing contract must be in writing. T F
158. A broker cannot collect a commission unless he obtains a contract signed by the owner. T F
159. A broker, upon expiration of the listing term, should always furnish the owner with the names of all persons to whom he submitted the property during the listing. T F
160. When deposit money is received by the broker, he may use such money for his personal account up to the amount of his commission as soon as agreements of sale are signed. T F
161. Brokers employing salesmen are relieved of all responsibility for the acts of the salesmen if the salesmen are bonded. T F
162. The real estate salesman should not be concerned with the restrictions attaching to a property while attempting to negotiate its sale. T F
163. A salesman transferring to another broker is entitled to take with him the listings which he obtained personally while working for the first broker. T F
164. All brokers are members of the National Association of Real Estate Brokers. T F
165. A real estate salesman must be at least 21 years of age. T F
166. A broker can recover upon a quantum meruit basis where he effects a sale and no agreement exists as to his commission. T F
167. In an integrated association, every licensed broker would be a member of the state real estate association. T F
168. In an estate by the entirety, either husband or wife may give a valid listing of the property to a broker and bind the other spouse. T F
169. One who takes and passes a real estate course given by a real estate Board is entitled to use Graduate Realtors' Institute. T F
170. A broker, under an exclusive listing, should not disclose the identity of his prospect until agreements are signed. T F
171. Compensation to a broker must be in the form of money. T F
172. In order to prosecute a person for acting as a broker without a license, it is essential to prove that he received compensation or expected compensation. T F
173. A person employed by a licensed broker to auction real estate, requires a license. T F
174. A real estate listing may be taken in the name of a salesman so long as the transaction is closed in the name of the broker. T F
175. A broker employed "to sell" a property can sign an agreement of sale for the owner, which would be enforceable. T F
176. A broker is entitled to a commission under an "exclusive right to sell listing," if the owner sells the property himself during the term of the listing. T F
177. If owner and broker have not expressly agreed upon the rate of commission, the broker is entitled to recover on a "quantum meruit" basis, if he makes the deal. T F
178. The principal in a listing agreement is the seller. T F
179. Earnest money is the commission which the broker receives when the deal is closed. T F
180. A property is listed at \$20,000. The broker tells a prospect that he knows the

- owner will accept \$18,000. The prospect offers \$18,000, which is accepted by the owner. The broker has violated his duty to the owner. T F
181. A salesman may deduct his share of the commission from a down payment before turning it over to the broker. T F
182. The commission rate for selling real property is usually at the same rate as for leasing. T F
183. Where an owner lists a property for sale with a broker "at a sale for not less than \$5,000," the broker is entitled to \$1,000 commission if he sells the property for \$6,000. T F
184. If an owner lists a property for sale with one broker, he cannot employ another broker to sell the same property unless the first broker withdraws. T F
185. An agency to sell real estate usually comes under the Statute of Frauds. T F
186. Where a property is listed for sale with the broker at \$7,000, and a sale is made to the broker's prospect at \$5,000, the broker is entitled to a commission. T F
187. Every real estate contract negotiated by a broker should contain a clause recognizing the broker as the procuring cause of the sale. T F
188. A broker who initiates a deal is entitled to a commission if, a year later, a sale is made by the parties direct without the assistance of the broker. T F
189. A broker is the "efficient and procuring" cause of a sale when he procures a buyer, ready, able, and willing to buy. T F
190. A broker can compel the payment of his commission out of the proceeds of the deal at the time it is closed. T F
191. A broker may file a lien against the owner's real estate for an unpaid commission. T F
192. A listing contract containing a confession of judgment clause for the broker's commission is considered bad practice. T F
193. A commission agreed upon by broker and buyer will prevent the broker from collecting a commission from the seller. T F
194. Whether a broker is the efficient cause of a sale is a question of law and not of fact. T F
195. An exclusive agency contract permits the owner to sell without liability for a commission to the broker. T F
196. An unlicensed broker may collect a commission in the sale of real estate, by court action, if he has a signed exclusive listing from the seller. T F
197. A "postdated check" given for a deposit has the same effect as a N.S.F. check. T F
198. The broker who obtains the buyer's signature on the "dotted line" is the one entitled to a commission. T F
199. A broker has the legal right to render an opinion on the validity of title to real estate. T F
200. It is illegal for a broker to lend his commission to the buyer for an earnest money deposit. T F
201. If you, a licensed real estate salesman, obtained a real estate listing, and subsequently located a buyer for your listing, you would be within your rights under the real estate license law to close the transaction, so long as your broker received his rightful share of the commission. T F
202. A broker may collect a commission from both parties in an exchange deal with their knowledge and consent. T F
203. Where two brokers claim a commission in the sale of a house, the owner should pay the broker who makes the first claim. T F
204. Where two or more brokers claim a commission for the sale of the same property, the owner should pay the money into court. T F
205. A contract accompanied by deposit money is not always *conclusive* evidence that the broker is entitled to the commission. T F
206. A listing "for an unlimited period of time" is enforceable. T F
207. Most prospects are alert to observe misrepresentations of salesmen and brokers. T F
208. A satisfied customer for a home represents economic justification for a broker. T F

209. In order to protect his commission, it is advisable for a broker to draw up a contract of sale. T F
210. A broker's contract of employment which cannot be completed in one year must be in writing. T F
211. A broker may be held responsible for representing property as "the most quiet spot in the world." T F
212. Placing a "For Sale" sign upon vacant property without the owner's authority constitutes unethical conduct. T F
213. In order to secure a listing of property to sell, it would be permissible to give a friend a ten-dollar bill to assist you in securing the listing. T F
214. A broker is entitled to his commission if he produces a buyer ready, willing, and able to meet the terms proposed by the seller in his listing, even if the owner refuses to go through with the deal. T F
215. A broker usually does not require the signatures of both husband and wife on an "authorization to sell" their community property. T F
216. Where parties to a sales contract rescind the agreement, the broker cannot recover a commission. T F
217. Quantum meruit means the reasonable value of a broker's services. T F
218. An owner is never liable for more than one commission in the sale of a single property. T F
219. In a suit upon a "quantum meruit" basis, the broker seeks to recover the usual or prevailing rate of commission. T F
220. An escrow company may be fined for paying commissions to any unlicensed person. T F
221. The data on the reverse side of a listing contract constitutes a part of the employment contract. T F
222. Failure to give an owner a copy of the listing contract prevents the broker from recovering his commission. T F
223. A broker may purchase property listed with him for sale if he informs the seller he is acting as a principal. T F
224. A broker who has been refused a commission can block a sale if he notifies the title company or escrow company, in writing, of his commission claim. T F
225. A broker has a right to file a Mechanic's Lien for his unpaid commission. T F
226. After an agreement of sale is signed and the buyer sues the seller for some grievance, the broker should file an interpleader action to protect his commission claim. T F
227. A bilateral listing contract is preferable to a unilateral contract from the broker's standpoint. T F
228. A broker who has failed to show the buyer the property listed with him, cannot recover a commission. T F
229. A broker's commission must be negotiated before the listing is signed in order to be a valid claim, in case of a suit. T F
230. An able buyer must be a buyer of financial *substance*. T F
231. From the standpoint of a salesperson, it is more advantageous to be considered an employee of the broker, rather than an independent contractor. T F
232. In practice, in a multi-list association, the listing broker always receives a larger percentage of the commission than the selling broker. T F
233. A licensed broker, under the license law, cannot be employed as a salesperson by another broker. T F
234. The commission charged for different kinds of property in one community, is always the same. T F
235. In the eyes of the law, "submitting" a property to a prospect, and "negotiating" with a prospect, are the same. T F
236. A foreign broker usually refers to a broker in another state. T F
237. Where a broker makes a material misrepresentation to a buyer, he may be sued

- in a trespass action. T F
238. The act complained of in trespass is a tort. T F
239. Suit for a commission is an action in assumpsit. T F
240. An owner is not liable for a misrepresentation in a written listing, unless he has warranted the information on the listing as true and correct. T F
241. Hand money and an earnest money deposit are the same. T F
242. A broker-salesperson must deposit all earnest money deposits in his (or her) trust account. T F
243. Where a property is listed at \$50,000 a salesperson could advise the prospect to make an offer at \$45,000, as he is "pretty sure" the owner will accept it. T F
244. It is lawful for a broker to pay an attorney-at-law who is not licensed, where the attorney helped with the deal. T F
245. A broker is a nonproductive economic element in our society. T F
246. Inquiry of a seller as to price and availability for sale does not constitute a contract of employment. T F
247. Three different actions may be brought against a broker who makes a secret profit at the expense of his principal. T F
248. Where two real estate closings occur at the same time, the broker may close one deal and his salesman the other. T F
249. A broker is a special agent and not a general agent of his principal. T F
250. A real estate broker's commission is deemed to have been earned by him at the closing of title. T F
251. Open listing means the price is not set. T F
252. Experts agree that an advertising budget should not exceed 10% of gross commission. T F
253. A real estate broker holding a sixty-day exclusive agency to sell a parcel of real property should discontinue his efforts to sell such property if the owner dies during the sixty-day period. T F
254. When the sales contract calls for FHA or GI financing, the broker is required to advise the seller that he is obligated to pay discount points on the loan. T F
255. A broker must first air a commission dispute before the local real estate board's grievance committee before suing in court. T F
256. A corporation officer, who is licensed as a broker, has authority to list a corporate property for sale with another licensed broker. T F
257. A "For Sale—See your broker" automatically gives any broker authority to sell the property. T F
258. A listing contract may contain a clause authorizing the listing broker to execute a binding contract of sale for the owner. T F
259. A "policy book" containing rules and regulations of the real estate office, signed by a salesperson, but not by the owner, is a valid contract. T F
260. A principal and agent relationship, a master and servant relationship and a broker-independent contractor relationship are one and the same. T F
261. All full-time brokers are Realtors. T F
262. Whenever a broker is authorized to negotiate for the sale of property, he is also authorized to accept a deposit. T F
263. If a real estate broker failed to disclose the identity of his prospective customer, and if the negotiations failed, and the purchaser sought out the owner and consummated the deal direct, the broker would not be entitled to his commission. T F
264. A real estate broker should never act as an escrow holder in transactions covering property in which he personally owns an interest. T F
265. A real estate broker is entitled to a commission for the consummation of a sale of real property for the asking price set by the seller, even though he was in a position to obtain another purchaser willing to pay more than the asking price. T F
266. It is unethical for a licensee to advise that the asking price of the seller is too high or too low. T F

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| 267. A broker should not bother an owner by submitting an offer which the broker considers ridiculously low. | T | F |
| 268. Advertising "Free Appraisal" is an ethical practice to secure listings. | T | F |
| 269. A Real Estate Commissioner may sell real estate without a license. | T | F |
| 270. "Puffing of goods" as applied to real estate means extravagant statements regarding the desirability of the property. | T | F |
| 271. A gives B, a broker, an exclusive listing on March 21, 1978 for 90 days. B dies on April 24, 1978. The listing is cancelled. | T | F |
| 272. A listing by a minor is voidable by him. | T | F |
| 273. A listing which provides for a 15 per cent commission is void. | T | F |
| 274. The National Association of Realtors regulates the rate of commission to be charged. | T | F |
| 275. In a multi-list association, the listing broker and the selling broker usually receive an equal amount of the commission. | T | F |
| 276. "Caveat emptor" relieves an owner or broker from any misrepresentation. | T | F |
| 277. In a multi-list association, the selling broker generally has no right to sue the owner for a commission. | T | F |
| 278. Dual contracts prepared by a broker to obtain a mortgage loan are illegal. | T | F |
| 279. A broker's suit for commission is based on privity of contract with the owner. | T | F |
| 280. Brokerage is the most profitable segment of the ordinary licensee's business. | T | F |
| 281. A "free lot" promotion is a good way to stimulate sales in a subdivision. | T | F |
| 282. An owner-builder of more than 20 houses requires a broker's license. | T | F |
| 283. The penalty for selling real estate without a license is the same as paying a commission to an unlicensed person. | T | F |
| 284. The law does not require a person to obtain a license for negotiating a sale until the contract is signed by the parties. | T | F |
| 285. A person may call himself a Realtor once he passes the state licensing examination. | T | F |
| 286. Where a property, subject to a mortgage, is listed for sale by the owner, the mortgagee must agree to the listing. | T | F |
| 287. Where a property is leased, the broker must receive consent of the tenant, to a listing given to him by the owner. | T | F |
| 288. Once a salesperson is licensed, he should concentrate on selling and discontinue further study in real estate courses. | T | F |
| 289. By-laws of a real estate board do not take precedence over the Rules and Regulations of a Real Estate Commission. | T | F |
| 290. The North Carolina Real Estate Board and the North Carolina Real Estate Association are the same. | T | F |
| 291. A broker is a quasi-professional. | T | F |
| 292. A broker may rely on the seller's statement as to zoning of the listed property. | T | F |
| 293. It is the broker's duty to notify the owner at what time the buyer has defaulted and forfeited his deposit money. | T | F |
| 294. If a listing is void under the Statute of Frauds, oral testimony by disinterested witnesses would render the listing valid. | T | F |
| 295. A broker may advertise State Approved Broker or Realtor when he receives his license. | T | F |
| 296. The state may waive the initial examination if the applicant has passed the 3-year Graduate Realtors Institute program. | T | F |
| 297. The Graduate Realtors Institute is a major step forward in attaining professional acceptance by the public. | T | F |
| 298. A salesman owes a prospect the duty to disclose the lowest price the seller will take, if it is considerably less than the listing price. | T | F |
| 299. It is illegal for a broker to recommend that the seller allow the buyer a credit of \$1,000 for the purchase of a \$5 painting from the buyer, in order for the buyer to obtain a higher mortgage. | T | F |

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| 300. A salesman negotiates a deal and witnesses the signatures of buyer and seller. The seller's prime duty is to pay the salesman the commission at that time. | T | F |
| 301. The salesman should close the deal negotiated by him, since he has dealt with both buyer and seller. | T | F |
| 302. A person who has passed the state's broker examination, may advertise real estate for sale. | T | F |
| 303. A salesman is duty bound to disclose the lowest price an owner will take, even though it is much lower than the listing price. | T | F |
| 304. The fixing of a commission rate by a real estate Board for the members thereof, is considered illegal by the U.S. Department of Justice. | T | F |
| 305. If a listing is void under the Statute of Frauds, broker cannot recover advances made by him on behalf of the owner. | T | F |
| 306. A broker should know the zone of a listed property. | T | F |
| 307. Cities and villages may add their own licensing requirements to those established by the Legislature. | T | F |
| 308. Where a broker sues for a commission on a "quantum meruit" basis, and obtains a verdict, his commission will always be the prevailing rate in the community | T | F |
| 309. The National Association of Realtors was formerly the National Association of Real Estate Boards. | T | F |
| 310. The National Association of Real Estate Brokers, Inc., is the same as the National Association of Realtors. | T | F |
| 311. Most states now have educational and/or apprenticeship prerequisites for a broker's license. | T | F |
| 312. Brokerage is "the heart" of the real estate business. | T | F |
| 313. A broker can advance a salesperson's commission from his escrow account, only in a hardship case. | T | F |
| 314. The term of a written exclusive listing can be extended orally. | T | F |
| 315. The law considers that a broker has greater bargaining power than a layman in real estate negotiations. | T | F |
| 316. A broker is liable for any mistake in judgment. | T | F |
| 317. A contract of sale entered into in California, for sale of real estate in Mexico, determines the rights of the parties in Mexico. | T | F |
| 318. If a question relative to validity of title should arise, it is necessary that the broker recommend that the buyer should consult an attorney. | T | F |
| 319. A settlement officer of a title company, although not an attorney, would be qualified to render an opinion in the above case. | T | F |
| 320. An associate broker is permitted to have a trust account for deposit of earned money. | T | F |
| 321. A listing agreement is always a bilateral contract. | T | F |
| 322. A broker is under an affirmative duty to disclose hidden defects to his principal, if unknown to the owner. | T | F |
| 323. A Georgia broker may take a listing on property for a vacant tract of land in Florida. | T | F |
| 324. Representing that a seller is eager to sell because of ill health is merely "puffing of goods." | T | F |
| 325. A listing should contain a statement over the owner's signature that the data furnished the broker is true and correct. | T | F |
| 326. By virtue of a broker's expertise, he is qualified to estimate, at sight, the market value of a residence. | T | F |
| 327. A broker may loan a purchaser the earnest money deposit, in return for a check payable in 30 days. | T | F |
| 328. From the standpoint of a broker, it is preferable to have a master-servant relationship with salespersons. | T | F |
| 329. The broker always pays for classified advertising of a listed property. | T | F |
| 330. A real estate association by-law can deny membership to a part-time broker. | T | F |

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| 331. A multi-list association of a real estate board cannot refuse membership to a non-member of a board, who is licensed. | T | F |
| 332. A real estate board is required to admit to membership every licensee who makes application. | T | F |
| 333. Many canons of ethics of the National Association of Realtors are statutory grounds for disciplinary action by the Real Estate Commission. | T | F |
| 334. The National Association of Realtors and the National Association of Real Estate Brokers, Inc. are the same organization. | T | F |
| 335. An ordinance of a municipality prohibiting "For Sale" signs on real estate, is unconstitutional. | T | F |
| 336. The Court may strike down a commission contract where there is unequal bargaining power between broker and owner. | T | F |
| 337. A clause in a listing contract which provides for payment of the commission, if cancelled by the owner prior to its expiration date, is binding. | T | F |
| 338. The law of brokerage is in the form of a statutory code. | T | F |
| 339. A real estate board can refuse membership to an applicant for cause. | T | F |
| 340. The abbreviation, d/b/a, is the same as t/a. | T | F |
| 341. Most Real Estate Commissioners are Realtors or Realtists. | T | F |
| 342. Exclusion of a part-time broker from a multiple-listing service is an anti-trust violation. | T | F |
| 343. A listing accepted by a broker who merely places it in a file is a unilateral contract, which can be revoked by the owner at any time before the expiration date. | T | F |
| 344. Where an owner cancels an exclusive listing the next day after it was signed, the broker, per se, is entitled to the commission agreed upon in the listing. | T | F |
| 345. A licensed broker in New York may sue in New York on a brokerage contract, regardless of where the property is located. | T | F |
| 346. A broker's knowledge of available properties is his "stock in trade." | T | F |
| 347. Failure of a broker to disclose all offers to his owner may constitute grounds for disciplinary action. | T | F |
| 348. A corporation and a partnership have the same advantages and disadvantages in operating a real estate business. | T | F |
| 349. A property should be advertised at a higher price than the listed price, to include the broker's commission. | T | F |

Multiple Choice

(Answers to this section are on pages 690-691.)

1. City Industries, Inc., posted a large sign on its six-story building, which read

<p style="text-align: center;">For Sale or For Rent See Your Broker</p>

Adams, a licensed broker, talked to Lee, Executive Vice-President, City Industries, Inc., about price, terms of a sale, area and possession. Adams next sent Lowell, a prospect, to inspect the building. He was shown through the building by the building superintendent on a Sunday. Several days later, Lowell's firm bought the building. Under these circumstances:

- I. Adams can recover commission from City Industries, Inc.
- II. Adams can recover a commission from Lowell's firm.
 - (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
- 2. Broker, Haines, representing James, negotiated an option with Kane for the purchase of a tract of land for \$210,000. The period of the option was from September 1, 1977 to December 1, 1977. Kane notified James on November 21, 1977 that he was exercising the option to purchase, according to its terms. Formal agreements were not signed until January 2, 1978, and payment made. Under these circumstances, Haines is entitled to a commission
 - I. from James.
 - II. from Kane.
 - (a) I only.
 - (b) II only.
 - (c) from both I and II.
 - (d) from neither I nor II.
- 3. Abbott gave Broker Bates an exclusive listing on his property on October 1, 1977 for six months. Bates placed his "For Sale" sign on the property. On November 25, 1977, a severe windstorm loosened several slate roof shingles, which fell to the street. A neighbor reported this fact to Bates, who surveyed the damage but did nothing more. On January 19, 1978, a severe windstorm disrupted several more shingles, which struck and injured a pedestrian, Evans. Under these circumstances, Evans has a cause of action against
 - I. Abbott.
 - II. Bates.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 4. Anderson lists his residence for sale with Bailey, a licensed broker, at \$20,000 for a 90-day period, expiring July 31, 1978. During this period, Bailey shows the property to Chadwick. On August 26, 1978, Bailey returns with Chadwick to see the Bailey home, but Chadwick says "I don't want to see it again, I don't like the blue gable roof." That evening, Chadwick and his wife, unbeknown to Bailey, return to the Anderson property and purchase it for \$1,400 less than the listed price. Chadwick does not disclose that they ever saw the property with Bailey. Under these circumstances:
 - I. Bailey can recover a commission from Anderson.
 - II. Bailey can recover from Chadwick.
 - (a) I only.
 - (b) II only.
 - (c) either I or II.
 - (d) neither I nor II.
- 5. An exclusive right to sell listing is given by Jones to Haines, a licensed broker, for 90 days. It provides: "In consideration of \$1.00 received by me (the owner), I hereby list my property with (broker)." The \$1.00 was not paid by the broker to the owner. The broker advertised the location of the property in a display advertisement and several prospects went to see the property. Ten days later, the owner cancelled the listing and sold the property himself to his own prospect. The broker sued for a commission.
 - I. The broker can recover his commission.
 - II. The broker can only recover his expenses.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 6. Adams, unlicensed on March 21, 1978, negotiated a real estate sale on that date from the owner, Bates, to Chase, a fellow employee of Adams. Bates knew that Adams was going into the real estate business and told him, "I will take care of you." Agreements

of sale were signed on March 24, 1978. The transaction was closed on June 24, 1978. At that time, Adams was a licensed salesperson for Donovan, a licensed broker. Bates and Chase refuse to pay a commission to anyone.

- I. Adams can recover from Bates on a quantum meruit basis.
 - II. Donovan can recover from Bates.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
7. The average real estate broker finds commissions are earned mainly from sales of
 - (a) commercial properties.
 - (b) dwellings.
 - (c) industrial properties.
 - (d) investment properties.
 8. A salesperson receiving a deposit should
 - (a) place it in his "Special Account."
 - (b) place it in the broker's general account.
 - (c) turn it over to his broker.
 - (d) place it in the salesperson's trust account.
 9. In an exchange deal, a salesman employed by broker "A" may receive a share of commission from
 - (a) broker "B," who represented one of the principals.
 - (b) salesman "C," employed by "B."
 - (c) salesman "D," employed by "A."
 - (d) none of these persons.
 10. Upon the death of a broker, his listings may be taken over by
 - (a) his widow.
 - (b) his son, who is of lawful age.
 - (c) a trust company.
 - (d) none of these.
 11. An oral agreement between two licensed brokers to divide a commission is
 - (a) void.
 - (b) valid.
 - (c) voidable.
 - (d) must be approved by seller.
 12. If a property consisting of 10 dwellings is listed at not less than \$65,000 to the owner, and after one year, the dwellings are sold separately, but in the aggregate, the sum realized is \$65,000, the broker can recover, as his commission,
 - (a) the amount of deposit money held in his escrow account at that time.
 - (b) 7%, which is the going commission rate in that area.
 - (c) on a quantum meruit basis.
 - (d) nothing.
 13. A broker took a prospect to a listed property, but the prospect declined to inspect it. That evening, the prospect and his wife went to inspect the house, telling the owners that the wife had heard it was for sale at a meeting of the wife's garden club that afternoon. The prospects purchased the property. Under these circumstances, the broker can sue
 - I. the sellers in an assumpsit action.
 - II. the buyers in a trespass action.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
 14. The duty of a broker to keep the owner fully informed as to negotiations with a prospect, is because the broker is a

- (a) cestui que trust.
- (b) fiduciary.
- (c) liable under the doctrine of respondeat superior.
- (d) amicus curiae to the owner.
15. In a multi-list association, the selling broker, as between him and the listing broker, usually receives
 - (a) one-half of the net commission paid.
 - (b) less than one-half.
 - (c) more than one-half.
 - (d) the amount determined by the executive board.
16. A contract of employment between Davis Realty Co. and Helen Miller, salesperson, provided, in part, "No commission shall be considered earned, or payable to salesperson until the transaction has been completed and the commission collected by the company." Helen procured a buyer and agreements were signed. Before the deal was closed, she changed employers:
 - (a) she can recover her commission.
 - (b) she cannot recover a commission.
 - (c) she would first have to terminate her new employment.
 - (d) she can sue the owner.
17. Two rival brokers claim the commission in a real estate deal. Broker "A" sues the owner. The owner should
 - (a) pay the broker with whom the property was listed.
 - (b) pay the money into court (interpleader).
 - (c) pay each broker one half.
18. An open listing is one which allows the broker
 - (a) a reasonable period of time to obtain a buyer.
 - (b) a definite period of time within which to obtain a buyer.
 - (c) 90 days within which to obtain a buyer.
 - (d) the customary period of time to procure a buyer.
19. In a multi-list association, a salesman, who negotiates a sale, is directly responsible to
 - (a) the listing broker.
 - (b) his employing broker.
 - (c) the multi-list association.
 - (d) the seller.
20. Real estate practice dictates use of
 - (a) an open listing.
 - (b) a net listing.
 - (c) exclusive listing.
 - (d) an exclusive right to sell listing.
21. A proper recital of the commission to be paid in a written listing should read at
 - (a) the rate usually charged in the area.
 - (b) fixed percentage on the sales price, as negotiated by broker and owner.
 - (c) on a quantum meruit basis.
 - (d) the rate prescribed by the law.
22. Real estate brokerage is governed by the law of
 - (a) Statute of Frauds.
 - (b) agency.
 - (c) the commercial code.
 - (d) conveyancing.
23. Where a broker obtains a buyer, how many contracts are essential in order for the broker to establish a valid commission claim?
 - (a) One.
 - (b) Two.
 - (c) Three.
 - (d) Four.

24. In listing property for sale, which item is *not* necessary for a valid exclusive listing agreement?
- (a) Date of listing.
 - (b) Address of property.
 - (c) Legal description.
 - (d) Listing period.
25. Another broker has a listing on a property you desire to show a prospect. Which one of the following should you do?
- (a) Call the local Real Estate Board.
 - (b) Wait until the other broker's listing expires.
 - (c) Get in touch with the other broker and ask his permission to show the property.
 - (d) Show your prospect the property and then call the owner for a listing.
26. A real estate listing is
- (a) a list of all property held by one owner.
 - (b) employment of a broker by owner to sell or lease a certain real property.
 - (c) a written list of improvements on the land.
 - (d) a rendition of property for taxation.
27. An agent is one employed by a
- (a) salesman.
 - (b) principal.
 - (c) master.
 - (d) broker.
28. All real estate listed for sale by a broker should be advertised in the name of the
- (a) seller.
 - (b) salesman who obtains listing.
 - (c) salesman on the premises.
 - (d) principal licensed broker.
29. What is the maximum commission rate that a broker may charge on the sale of improved property?
- (a) 6%.
 - (b) 5%.
 - (c) 7%.
 - (d) Any rate agreed upon by agent and principal.
30. An agency coupled with an interest is one
- (a) that cannot be terminated before its expiration date.
 - (b) where broker makes a secret profit at the expense of his principal.
 - (c) where broker receives interest-bearing note in payment of his commission.
 - (d) where a suit is filed for commission, which constitutes a lien on the real estate.
31. Alberts negotiated a sale between his owner, Burrows and a buyer, Champ. Later, owner and buyer agree to call the deal off. The broker, Alberts, can
- (a) recover a commission from Burrows.
 - (b) recover a commission from Champ.
 - (c) recover from Burrows and Champ.
 - (d) recover from neither Burrows nor Champ.
32. A real estate transaction may be closed by the salesman, if
- (a) the salesman obtained the listing.
 - (b) the listing was obtained by another salesman in the same office.
 - (c) the listing was obtained by a salesman employed by another broker.
 - (d) none of these.
33. It is possible for an owner to have more than one agent endeavoring to sell his property. It is:
- (a) an open listing contract.
 - (b) multiple listing.
 - (c) a non-exclusive listing.
 - (d) a general listing.

34. The first step necessary for a licensed broker to recover a commission is to
 - (a) find a buyer.
 - (b) find a seller.
 - (c) have a contract of employment.
 - (d) advertise the property for sale.
35. Norton listed his residence for sale with Todd at \$100,000. Todd obtained a prospect, Hale, telling him to make an offer of \$85,000, which he said the owner would very likely accept. Hale made the offer and Norton accepted. The transaction was closed. Later, Norton ascertained that Hale would have paid \$100,000. Norton sued Todd.
 - I. Norton can recover the commission paid.
 - II. Norton can recover the difference in price.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
36. In which of the following listing contracts is the broker's commission not paid on a percentage basis?
 - (a) Verbal listing.
 - (b) Exclusive right to sell.
 - (c) Multiple listing.
 - (d) None of these.
37. A listing agreement which contains a rate of commission, fixed by a real estate organization, is
 - (a) valid.
 - (b) void.
 - (c) voidable.
 - (d) subject to arbitration.
38. Where a state real estate license law included mortgage brokers in the definition of a real estate broker, Gray, unlicensed, negotiated a \$2,500,000 loan for a commission of one per cent. After the transaction was completed, the owners refused to pay a commission. Under these circumstances:
 - I. Gray can recover as a "finder."
 - II. Gray can recover on a quantum meruit basis.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
39. A licensed broker had a verbal listing of a property in a state which requires listings to be in writing. He negotiated a sale. The agreement of sale contained a clause which recognized the broker's right to a commission of five per cent on the purchase price. The owner refused to pay and the broker sued.
 - I. The broker can recover, as a third party creditor-beneficiary.
 - II. The seller must pay, due to unjust enrichment.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I or II.
40. In the real estate business another term for an owner is
 - (a) customer.
 - (b) prospect.
 - (c) principal.
 - (d) alter ego.
41. The relationship of a licensed real estate broker to his principal is that of a
 - (a) trustee.
 - (b) salesman.

- (c) fiduciary.
 - (d) beneficiary.
42. A contract authorizing the sale of real property which is signed by a minor is
- (a) voidable.
 - (b) terminated.
 - (c) void.
 - (d) valid.
43. A valid listing on community property must be given by
- (a) husband.
 - (b) husband and wife.
 - (c) seller and mortgagee.
 - (d) broker and salesman.
44. A prospect to whom a broker shows the property, ordinarily has a right to rely upon the broker's representations as to
- (a) title.
 - (b) future prospects of income.
 - (c) all statements made by the broker regarding the property.
 - (d) past rentals of the property.
45. Hilton Co. listed a manufacturing plant with Commercial Realty, Inc. at \$150,000. Higgins, a salesperson, obtained a prospect, Harrison Mfg. Co., at \$140,000, but informed Hilton he had an offer of \$100,000. Commercial Realty prepared agreements at \$100,000 with Triangle Inc., a "straw" party, as the buyer. Because of dire financial straits, Hilton accepted the \$100,000 offer. Under these circumstances, Hilton Co. can
- I. sue Commercial Realty, Inc. for compensatory and punitive damages.
 - II. sue Higgins for compensatory and punitive damages.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
46. Henry gives a listing to Fairvue Realty on May 3, 1978 for 90 days. It provides for a commission to be paid "upon the sale or exchange" of the property. The broker obtains a prospect, Crawford, on July 31, 1978. On August 1, Crawford enters into a lease for one year, at \$200 per month, with an option to purchase; any rent paid to apply to the purchase price. Under these circumstances:
- I. Fairvue can recover commission on the sale.
 - II. Fairvue can recover a commission on the rent paid.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
47. Miller, a broker, receives \$1,000 from Gray, buyer, upon the sale of Lee's home. Miller's commission is \$725. The sale is not consummated because of a defect in Lee's title. Under these circumstances:
- I. Gray can recover the \$1,000 from Miller.
 - II. Gray can recover the \$1,000 from Lee.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
48. Michael Martin negotiates a sale of a dwelling for Allen, a builder, at \$45,000 and receives an earnest money deposit of \$2,000. At the closing, the buyer, Phelps, claims that the builder has used second grade facing brick, contrary to specifications, and refuses to close the deal. Under these circumstances, the broker should
- I. refund the money to Phelps.
 - II. report the matter to the Real Estate Commission.

- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
49. Aiken orally agrees to sell his residence to a friend, Barton, at \$40,000, in the presence of Hays and Oakes. Aiken and Barton shake hands "on the deal." Later, Aiken refuses to go through with the deal, although Barton has, in the interim, signed a written agreement to sell the property to Cook at \$42,750. Under these circumstances:
- I. Barton can compel Aiken to consummate the deal in action for specific performance.
 - II. Barton can recover damages from Aiken.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
50. A broker told a buyer that the house was connected to a township sewer, when it was serviced by a septic tank system. It cost the buyer \$700 to change to the township system. The buyer seeks to recover this amount. Buyer
- (a) can recover from the owner.
 - (b) can recover from the township.
 - (c) can recover from the broker.
 - (d) can recover from no one.
51. A property was listed at \$18,500. A prospect told the broker that he wanted the property and would pay that price, but asked the broker to submit a signed offer of \$16,600 and see if the owner would accept that price. The owner accepted. Later, the broker sued him for commission.
- (a) He can recover.
 - (b) He cannot recover.
 - (c) He can recover from buyer.
 - (d) He can file a suit for "unjust enrichment" against the buyer.
52. A broker obtained an exclusive listing on a property for 30 days at \$20,000. On the last day of the listing, the broker brought an offer to purchase the property signed by E. Gilligan. When asked who E. Gilligan was, the broker replied "A client of our firm." The deal was closed. Actually, the buyer was the mother-in-law of the broker and was a member of his household. Later the seller brought action to rescind the transaction.
- (a) The transaction will be rescinded.
 - (b) It will not be rescinded since the property was sold at the listing price.
 - (c) The transaction will not be rescinded, but the broker will have to forfeit his commission.
 - (d) The buyer will own the property as trustee for the seller.
53. A purchaser paid the consideration price of \$13,200. The broker mistakenly paid \$13,500 to the owner who returned the excess \$300 to the buyer. The broker sued the buyer for the \$300.
- (a) He cannot recover, because there is no privity of contract between broker and buyer.
 - (b) He can recover on the doctrine of quasi-contract.
 - (c) He must sue in seller's name.
 - (d) He could bring a criminal action against the buyer for obtaining money falsely.
54. The state of Arizona requires listings to be in writing. Wayne obtains a listing from King, but no mention is made of the commissions to be charged. Wayne obtains a buyer whom King accepts. Later, Wayne tells King his commission will be 6%. Under these circumstances:
- I. Wayne is entitled to 6 per cent commission.
 - II. Wayne can recover on a quantum meruit basis.
 - (a) I only.

- (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
55. Flynn and Filson are co-owners of a property. Flynn lists it for sale with Boulevard Realty, Inc. for \$60,000, with commission at 6 per cent. Boulevard obtains a bona fide purchaser at that price. Filson refuses to sign the agreement of sale. Boulevard Realty sues for commission.
- I. Boulevard Realty can recover from Flynn.
 - II. Boulevard Realty can recover from Filson.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
56. Caldwells listed their home for sale with A. W. Moon Realty for \$23,000 on July 16, 1977. On September 15, 1977, Hewitt, a salesperson, brought the owners a signed offer to purchase at \$22,500 and recited a \$2,000 earnest money deposit. In fact, it was a note in that amount. Moon did not learn about the note in lieu of cash deposit until 10 days later. Hewitt had been instructed to obtain cash, but was unsuccessful. The deal was to be closed on December 15, 1977. It was not until April 2, 1978, that the Caldwells learned about the note, and also that the buyers would not go through with the deal. Under these circumstances:
- I. the broker cannot collect a commission.
 - II. the broker's license can be suspended or revoked.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
57. Lee has given open listings to Aber & Co. and to Sweeney & Co. on March 18, 1978. Aber shows the property to a prospect, Clark, on March 27, 1978. Sweeney negotiates a sale to Clark on May 31, 1978. Lee pays Sweeney the commission.
- I. Aber can sue for conspiracy against Lee and Sweeney.
 - II. Aber is entitled to one-half of the commission from Sweeney.
- Under these facts which of the following would apply?
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
58. Which one of the following funds should not be placed in the real estate trustee account?
- (a) Earnest monies.
 - (b) Rental collections.
 - (c) Installment land contract collections.
 - (d) Insurance premiums.
59. A broker, Adams, listed Bigbee's property for sale at \$12,500. He obtains a prospective purchaser, Clark, at \$14,250. Adams can
- (a) report the sale to Bigbee at \$12,500 and keep the \$1,750 excess as his commission.
 - (b) obtain a "straw" party, Davis, at \$12,500 and then resell to Clark at \$14,250.
 - (c) report the sale to Bigbee at \$14,250 and collect commission on the sale.
 - (d) Adams can buy, in his own name, at \$12,500 and resell at \$14,250.
60. A broker is holding an earnest money deposit, equal to the amount of his commission. The seller, before the closing, not only refuses to pay the broker a commission but demands that the broker pay him the entire deposit money. The broker should
- (a) refuse to permit the closing of the deal.
 - (b) retain the earnest money as his commission.
 - (c) file a complaint with the Real Estate Commission.

- (d) pay the earnest money to the seller and then sue for his commission.
- 61. In the absence of a prior agreement as to when the broker's commission is earned, such commission is earned at
 - (a) consummation of the deal.
 - (b) meeting of the minds of buyer and seller.
 - (c) time broker introduced buyer to seller.
 - (d) when deed is delivered.
- 62. A licensed salesperson may share his commission with
 - I. a licensed salesman employed by another broker.
 - II. any licensed broker in another state, who shows the property.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 63. "In consideration of your efforts to obtain a purchaser, I hereby list with you for sale," etc., is a
 - (a) bilateral contract.
 - (b) unilateral contract.
 - (c) mutual contract.
 - (d) none of these.
- 64. An owner lists a property for sale with a broker at \$10,000, who finds a purchaser who is willing to pay \$11,500 for the property. The broker should
 - (a) report the sale to the owner on the basis of the \$10,000 listing and keep the \$1,500 as his commission.
 - (b) report the sales price to the owner and take commission on the \$11,500.
 - (c) figure his commission on \$10,000 and divide the \$1,500 excess equally between owner and himself.
 - (d) buy the property himself at \$10,000 and resell it to his buyer at \$11,500.
- 65. A broker receiving a deposit from a purchaser should
 - (a) give it to the owner.
 - (b) deposit it immediately in his general office checking account.
 - (c) deposit it in his personal account.
 - (d) deposit it in a trust account at a bank.
- 66. Real estate listed for sale with a broker should be advertised in the name of
 - (a) the owner.
 - (b) the licensed broker.
 - (c) the salesman to whom the listing has been assigned.
 - (d) the broker and the salesman to whom assigned.
- 67. The amount of commission to be paid to a broker is fixed by
 - (a) law.
 - (b) State Real Estate Department.
 - (c) agreement of the parties.
 - (d) the local real estate board.
- 68. A real estate broker must bring an action in the courts to recover real estate commission within
 - (a) one year.
 - (b) four years.
 - (c) time fixed by law for suits on simple contracts (Pa. 6 yrs.).
 - (d) ten years.
- 69. Adams, a licensed broker, is employed by Baker, who is also a licensed broker, as a salesperson. Upon receiving an initial deposit of \$100 on a sale made by Adams, and later an additional deposit of \$900 from a buyer, Adams should
 - I. deposit the \$100 in his own trust account.
 - II. deposit both the \$100 and \$900 in Baker's trust account.
 - (a) I only.

- (b) II only.
 - (c) deposit \$100 in Adams trust account and \$900 in Baker's trust account.
 - (d) neither I nor II.
70. A licensed New York broker, unlicensed in New Jersey, obtained a listing on an industrial plant in New Jersey owned by a Delaware Corporation. He submitted full details of the property to a firm in New York. Two officers of the firm made their own inspection of the property, and agreed to buy it. The closing was in New York. Since the property was in New Jersey, the owners refused to pay a commission to the New York broker. Under these circumstances, the broker can recover
- I. from the seller.
 - II. from the buyer.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
71. Adams listed his property for sale with Bates at \$40,000. Bates obtained a buyer, Cornwall, at the price, who made a deposit of \$2,000 with Bates. Bates prepared an agreement of sale, but left the name of the buyer blank. Adams, a pharmacist, signed the agreement and it was later signed by the buyer. Adams changed his mind and refused to go through with the deal or to pay Bates a commission, on the grounds that the agreement did not have the name of the buyer on it when he signed it. Under these circumstances:
- I. Cornwall can sue Adams for specific performance.
 - II. Bates is entitled to his commission.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
72. Adams listed his property for sale with Boyer at \$40,000. The listing does not state that Boyer is to hold the earnest money in his escrow account. Boyer negotiates a deal at \$40,000 to Clifton and receives an earnest money deposit of \$2,500. Adams refuses to sign the agreement unless the \$2,500 is paid to him. The agreement of sale recites "receipt of a deposit of \$2,500 is hereby acknowledged on account of the consideration price." The deposit money should be
- (a) paid to the seller.
 - (b) retained by Boyer in his escrow account.
 - (c) an escrow account for the \$2,500 should be opened in the joint name of Adams and Boyer.
 - (d) an escrow account should be opened in the joint names of Adams, Boyer and Clifton.
73. Which one of the following will not terminate a principal-agent relationship:
- (a) insanity of either principal or agent.
 - (b) death of principal.
 - (c) death of agent.
 - (d) change of business location of agent.
74. A contract which provides for the payment of a commission to a broker even though the owner makes a sale without the aid of the broker is called an
- (a) exclusive listing.
 - (b) open listing.
 - (c) option.
 - (d) exclusive right to sell.
75. If an owner refuses to pay the broker a commission, the broker may
- (a) file a complaint with the Real Estate Commission.
 - (b) file a lien against the real estate sold.
 - (c) bring court action.

- (d) take out a bond.
76. When broker and salesman have a dispute over the commission from a deal, they should
 - (a) complain to the owner.
 - (b) bring action in court.
 - (c) file a complaint to the Commission.
 - (d) compel arbitration.
77. An owner employs a broker to sell his real estate and promises to pay a commission; the broker brings about a sale on terms orally accepted by the owner so that the sale is fully consummated. Under such circumstances the broker's employment is
 - (a) valid.
 - (b) void.
 - (c) voidable.
78. If a broker receives more than one worthy, bona fide offer for the same property at approximately the same time, he should
 - (a) submit only the highest offer.
 - (b) submit all offers to the owner.
 - (c) submit only the one he considers for the seller's best interest.
79. Michael Flynn employs Dan Greene, a broker, to negotiate the purchase of a store building and agrees to pay him a commission of \$500. Greene contacts the owner, Adam Steele, and obtains a listing of \$9,000, with a 6% commission to Greene if a sale is made. Agreements of sale are signed at \$9,000. Buyer and seller later refuse to pay Greene. The broker
 - (a) can recover only from Flynn.
 - (b) can recover only from Steele.
 - (c) can recover from both Flynn and Steele.
 - (d) can recover from neither.
80. Adam Smith is 17 years of age, married, and owns a vacant lot in his own name. He employs the Ajax Realty Co. to sell the lot for \$6,000. Mary Richards, a licensed salesman, procures a buyer at the listed price and the deal is closed. Smith refuses to pay a commission on the grounds of infancy. Which of the following can recover a commission?
 - (a) Ajax Realty Co.
 - (b) Mary Richards.
 - (c) Ajax Realty Co. and Mary Richards in a joint action.
 - (d) No one.
81. A broker is entitled to his commission when
 - (a) he lists the property.
 - (b) he has shown the property to several prospects.
 - (c) he brings together a willing buyer upon the seller's terms.
82. To be enforceable a listing must be signed by
 - (a) broker.
 - (b) seller.
 - (c) buyer.
 - (d) tenant.
83. The broker's fiduciary relationship with the client requires that
 - (a) he act as a reasonable and prudent person.
 - (b) he discuss all angles of each deal with his salesmen.
 - (c) he act in the highest and best interests of his client.
 - (d) he act commensurate with his compensation.
84. A broker receives an offer to purchase upon a form which states: "This offer shall remain open irrevocably for a period of five days." On the third day, the prospective buyer notifies the broker he does not want the property and requests the return of his \$500 deposit. The broker should:
 - (a) return the deposit to the buyer.
 - (b) inform the buyer he must wait the full five days to see if the seller accepts.

- (c) notify buyer he must go through with the deal.
85. "Ethics" most nearly means
- (a) observing usual closing hours of other businesses.
 - (b) belonging to the proper civic clubs and community projects.
 - (c) observing duties to clients, colleagues and public.
86. An exclusive listing is
- (a) a listing given to several brokers.
 - (b) an implied listing.
 - (c) a listing on an exclusive or elegant property.
 - (d) a net listing.
 - (e) a listing given to one broker only for a limited period of time.
87. There are two ways of determining the amount of compensation a broker is to receive. One of these is
- (a) by overage.
 - (b) by time and effort.
 - (c) by provisions of the real estate license law.
 - (d) by diligence.
 - (e) by agreement.
88. The second way is:
- (a) upon a quantum meruit basis.
 - (b) arbitration.
 - (c) decision of local Real Estate Board.
89. Adams obtains a listing from Bell, which expires March 27, 1978. He obtains Chase, a prospective buyer, on March 21, 1978. Bell tells Chase to wait until April 15, 1978 before signing an offer to purchase and Bell agrees. Adams
- (a) can recover nothing.
 - (b) can recover from Bell.
 - (c) can recover from Chase.
 - (d) can recover from both Bell and Chase.
90. A broker received a deposit on a sale from the buyer. The deposit was held by the broker in his escrow account. The seller was unable to convey good title. The buyer demanded a refund of his deposit, which was in the same amount as the broker's commission and claimed by the broker, as his commission. Under these circumstances:
- I. the buyer can sue the seller and broker for the deposit.
 - II. the broker should file an interpleader for his commission.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
91. Cliff listed his property with Dean for sale. Dean shows the property to Acorn, who states he does not like the hilly terrain. Two days later, Acorn agrees to buy the property from Cliff, and the agreement is dated subsequent to the expiration of Dean's listing. Under these circumstances, Dean has a right of action against
- I. Cliff.
 - II. Acorn.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
92. Heller listed with Richards a row of six houses he owned, at \$90,000 net to Heller. Richards sold the houses, singly, over an eleven-month period, and the aggregate consideration amounted to exactly \$90,000. Heller refused to pay any commission. Richards sued Heller. Under these circumstances:
- I. Heller can recover on a quantum meruit basis, claiming a 7% commission.
 - II. Heller can recover 7% commission, which is the usual charge in that area, for the

sale of residences.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

93. Bright listed a vacant lot for sale with Boyd, who procured a social group, the Supreme Social Society, as a buyer. Both the president and treasurer had criminal records. As a courtesy to neighbors, Bright refused to sell. Boyd then produced Brown, who was introduced as a retired doctor, interested in building a medical clinic. After agreements were signed, Bright discovered that Brown was a "front" for Elite and refused to convey title. Boyd sued for a commission. Under these circumstances:

I. Boyd can recover from Bright.

II. Boyd can recover from Brown.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

94. Suit for a real estate commission can only be brought by

- (a) salesperson of the listing broker, who made the sale.
- (b) cooperating broker, who produced the prospect.
- (c) the listing broker.
- (d) the salesperson of the cooperating broker, who assisted in the necessary financing.

95. Brokers Taylor and Young were associated as co-brokers in promoting the sale of a tract of land. They obtained Zachary as a purchaser, but the deal was cancelled because he could not obtain financing. A week later, Taylor and Young came to the "parting of the ways" and terminated their relationship. Subsequently, Young interested a corporation, in which Zachary was a stockholder and officer, in purchasing the tract. Ten days later, the corporation sold the property to Zachary. A commission was paid to Young. Taylor sues Young for a share of the commission. Under these circumstances:

I. Taylor can recover from Young.

II. Taylor can recover from Zachary.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

96. Booth listed his property for sale with Church at \$37,500. Church obtains Doak as a prospect, who desires to purchase the property, but tells Church, "Look, I want the property, but I don't want to pay \$37,500. Make up an agreement of sale at \$32,650 and first see if the owner won't sign it." Church takes the agreement, signed by Doak, to Booth, who signs it. Later, Booth ascertains that Doak would have paid a higher price, and refuses to pay Church a commission. Under these circumstances:

I. Church can recover a commission.

II. Doak cannot obtain title to the property.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

97. Johns, a neighbor of Stone, a licensed broker, tells Stone on December 15, 1977, that his brother-in-law is interested in buying a home in the same neighborhood. Stone sells him a listed home within three days. In appreciation, Stone can

I. offer the purchaser's wife \$500, as a Christmas gift.

II. purchase a membership for the husband in a neighborhood tennis club.

- (a) I only.
- (b) II only.
- (c) both I and II.

- (d) neither I nor II.
98. A broker, upon showing a client's property to a prospect, should
- make an office memorandum.
 - confirm the interview by a memo to the buyer.
 - notify the seller as to the prospect's identity.
 - wait until the prospect makes the deal with the owner.
99. An owner told a broker that he would be pleased to obtain \$15,000 for a house left to him by an uncle. The broker sold it the next day to a buyer, who resold it at \$25,000 within three weeks. The owner seller can
- recover the \$10,000 profit from the first buyer.
 - recover from the broker.
 - file a complaint with the licensing commission or department.
 - do nothing.
100. In the above case, the broker should have suggested to the owner that he
- obtain the assessment by the county.
 - obtain an appraisal.
 - obtain a statement of all annual taxes against the property.
 - ask a local builder the probable market value.
101. A licensed broker, manager of large apartment buildings, bought quantities of supplies at wholesale prices, but he charged the various owners at retail prices. One apartment building owner discovered the situation and sued to recover \$1,200, representing difference between retail and wholesale prices for one year. He sued the broker. The broker's defense was that for the one building he would be unable to obtain wholesale prices. The owner
- can recover only interest on excess money spent.
 - cannot recover anything.
 - can recover excess cost.
 - can increase rental to cover excess costs.
102. The owner in the above case has certain alternative remedies. Which one of the following is *not* available to him:
- terminate broker's management contract.
 - file a complaint with the Real Estate Commission.
 - file a complaint with the Public Housing Authority.
 - file a complaint with the Real Estate Board, of which the broker is a member.
103. Collins listed vacant property for sale with Ayers for \$25,000, of which \$3,000 was to be payable in cash and the balance by a purchase money note in monthly installments, secured by a deed of trust (mortgage). The broker was to receive all amounts in excess of \$25,000. More than a year later, Collins sold the property to Ayers' prospect for \$24,000—\$3,000 cash and \$125 monthly on the mortgage plan. In a suit for commission, Ayers
- can recover 10 per cent fee for selling vacant land.
 - cannot recover.
 - can recover on a "quantum meruit" basis.
 - can ask to have the dispute heard by a board of arbitration.
104. A net listing contract
- generally favors the owner.
 - generally favors the broker.
 - is void as against public policy.
 - usually prevents a sale of the listed property.
105. Brown, a broker, represents to a young couple with two grade school children, that the grade school is only two short blocks away. Actually, the school will be discontinued in September and become part of a grade school district, with the new school about 1 1/2 miles distant. The buyers learn this in August, after the deal is closed.
- The buyers have no remedy.
 - The broker will be liable for the transportation charges to and from the school.

- (c) The buyers can rescind the deal.
 - (d) Obtain a refund of part of the purchase price.
106. A salesperson, enroute to a sample house with a prospect, suffers injuries in an automobile accident. He is
- (a) protected for injuries against his broker, under the Workmen's Compensation laws.
 - (b) he is not so protected.
 - (c) he can only recover for his injuries under any accident policy he carries personally.
 - (d) he can recover unemployment compensation against his employer for the period he is unable to work.
107. The Winthrop Clinic offered to pay a commission to Neil Smith, if he could purchase an adjoining lot, which they desired for parking. Smith obtains a listing and a sale is made to Helen Miller, a secretary to the clinic's manager. Three days later she conveys the lot to the clinic. In a claim for commission
- (a) Smith can recover from the clinic.
 - (b) Smith can recover from the lot owner.
 - (c) Smith can recover from both clinic and lot owner.
 - (d) Smith can recover from no one.
108. Broker Stone showed a number of properties to Ann Simon. On seeing one of the properties, she told Stone that she had already seen the property with Broker Wolf. She contacted Wolf about three weeks later and signed an agreement to purchase the property. Stone contacted Wolf and Mrs. Simon and demanded one-half of the commission.
- (a) Stone can recover one-half commission from Wolf.
 - (b) Stone can recover one-half commission from Ann Simon.
 - (c) Stone can recover a full commission from the owner.
 - (d) Stone cannot recover from anyone.
109. Which type of contract affords the broker the least protection?
- (a) An open listing.
 - (b) An exclusive listing.
 - (c) A written listing.
 - (d) An exclusive right to sell listing.
110. Whether to keep the forfeited earnest money, resell the property, or sue the buyer for performance, where the buyer defaults, is a matter to be decided by the
- (a) broker.
 - (b) salesman.
 - (c) court.
 - (d) seller.
111. A broker, who sells a property to a purchaser recommended by a friend, should
- (a) thank the friend.
 - (b) buy the friend a suitable gift.
 - (c) give the friend half the commission.
 - (d) pay the friend 5 per cent of the commission.
112. An example of fiduciary relationship is that which exists between
- (a) broker and prospect.
 - (b) broker and anyone he talks to about real estate.
 - (c) broker and client.
 - (d) broker and the Real Estate Commission.
 - (e) broker and salesman's prospect.
113. The broker must obey all instructions made known to him by his principal. Should the principal instruct the broker to violate the law, the broker should
- (a) do as instructed.
 - (b) not do as instructed.
 - (c) withdraw from the transaction.
 - (d) sue the principal.
 - (e) do nothing.

114. The law that requires certain contracts to be in writing in order to be enforceable is called the
- I. parol evidence law.
 - II. statute of limitation.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
115. After reading carefully the listing contract in this Ninth Edition on Page 100 of *Questions and Answers on Real Estate*, answer the following questions:
- (1) The type of listing contract set forth is
 - I. an exclusive listing.
 - II. an exclusive right to sell listing.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
 - (2) In the second paragraph, beginning with "The authority of . . .," there is contained provision for
 - I. an automatic extension clause.
 - II. a carry over clause.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
 - (3) Under the terms of the said listing contract, the rate of commission
 - I. must be the same as the rate generally charged by Realtors in the community.
 - II. must be no higher than the commission recommended by the Real Estate Commission.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
 - (4) Under this listing contract, all earnest money deposits shall be held by the listing broker in
 - (a) the firm's escrow or trust account.
 - (b) the firm's business checking account.
 - (c) the firm's safe deposit box.
 - (d) any of the above.
116. If an option listing is drawn, satisfactory to the seller, the broker is entitled to a commission of
- (a) 7% of the option price for the property.
 - (b) 10% of the option price for the property.
 - (c) 7% of the amount paid for the option.
 - (d) nothing.
117. An owner converts a 3-story dwelling into 6 apartments, in violation of the zoning law. The owner lists the property for sale with a broker at \$23,500. Should the broker
- (a) list the property at \$23,500.
 - (b) refuse to list the property.
 - (c) suggest owner list property at \$20,000.
 - (d) obtain a buyer at \$23,500 and have owner apply for a variation permit from the Zoning Board or Board of Adjustment.
118. Ash gives a written listing on certain property to broker, Brown, for sale on stipulated price and terms. Ash does not list this property with any other broker for 90 days.
- (a) Brown has an exclusive listing.

- (b) Ash cannot sell the property to a buyer obtained through his own efforts. T F
- (c) If Ash sold this property to a purchaser produced by a friend, he would have to pay Brown a commission. T F
- (d) This listing does not create a fiduciary relation between Ash and Brown. T F
- 119. Broker Martin advertised a dwelling for rent at \$240 per month. A prospect inquired and wanted to see the property immediately. Martin was busy at the time, so he gave the prospect a key to the premises and demanded a \$10 deposit for its return. The deposit was paid but the prospect never returned. Later, it was discovered that air conditioners were missing, worth \$350.
 - (a) Martin is liable for the loss.
 - (b) Martin is not liable for the loss.
 - (c) The loss will be made up out of the first two months rent.
 - (d) No commission will be due on any lease negotiated by Martin during the first year.
- 120. Don Garwood listed his home for sale with the Fairview Realty Co. at \$21,000, commission is to be 7 per cent. A buyer is obtained at \$20,500, who gives the broker a deposit check for \$750. Later, the buyer is unable to obtain financing for a \$19,500 mortgage and refuses to complete the deal. The broker sues the owner for commission:
 - (a) the owner must sue the buyer for specific performance.
 - (b) the broker can keep the deposit money.
 - (c) the broker can hold the owner to a full commission.
 - (d) the broker cannot recover.
- 121. Clark is anxious to sell his house for \$28,000. Clark mentions this fact to a friend, Wilson, who, in turn, tells his friend, Curtis. Curtis, in turn, introduces Stone to Clark. Curtis urges Stone to buy the property and promises financing. Stone purchases the property at \$26,750. Curtis claims a commission from Clark:
 - (a) he can recover.
 - (b) he cannot recover.
 - (c) he can file a complaint for services with the Consumers Protection Commission.
 - (d) he can assign his claim to a licensed broker.
- 122. An owner gave a written exclusive listing to a broker on a dwelling at \$50,000, commission to be 6 per cent. During the 90-day exclusive period, the broker produced a prospect who offered \$45,000, which the owner refused. One month after the listing expired, the same prospect bought the property at \$45,000. Under these circumstances the broker
 - (a) can collect a commission from the seller.
 - (b) cannot collect a commission from the seller.
 - (c) can collect from both seller and buyer.
 - (d) can bring an action of conspiracy against seller and buyer.
- 123. The terms of a written exclusive listing is for 60 days, and calls for a 7 per cent commission. At the expiration of the term, the owner, at the request of the broker, orally extends its duration for one month. During that month, broker brings a prospect, who purchases the property. Owner refuses to pay a commission, claiming the extension was not in writing. Broker sues.
 - (a) Broker cannot recover.
 - (b) Broker can recover.
 - (c) Broker can recover on a quantum meruit basis.
 - (d) Broker can recover from buyer and seller.
- 124. A salesman obtains a binding offer in writing and is given a deposit of earnest money.
 - (a) He should immediately turn contract and deposit over to the employing broker. T F
 - (b) Should the offer not be accepted by the owner, the money should be returned to the prospective buyer. T F
 - (c) If the offer is accepted by the owner and the owner thereafter refuses to or cannot deliver title, the broker should keep the deposit, or part of it, to pay him for his trouble. T F

- (d) Should the owner accept the offer and the prospective buyer fail to complete the sale for reasons of his own, the money should be divided equally between the broker and owner up to the amount of what the broker's commission would have been had the sale been completed. T F
- (e) If the face amount of the offer is considerably larger than the price in the listing, only the price stated in the listing should be offered the owner. The balance should be divided between the salesman and broker. T F
125. A broker may lawfully receive a commission from
- (a) the owner. T F
 - (b) a co-broker. T F
 - (c) both buyer and seller. T F
 - (d) a salesperson of a second broker. T F
126. A contract which provides for the payment of a commission to a broker, even though the owner makes a sale without the aid of the broker, is called
- (a) exclusive listing.
 - (b) unilateral contract.
 - (c) bilateral contract.
 - (d) multiple listing.
 - (e) exclusive right to sell.
127. A listing may be brought to an end in several ways. One of these is included in the following:
- (a) regulation.
 - (b) reneging.
 - (c) regurgitation.
 - (d) renunciation.
128. An authorization to a person to act for and in behalf of another in a real estate transaction is called
- (a) an option.
 - (b) a power of attorney.
 - (c) a reconveyance.
 - (d) an exclusive right of sale.
129. An unlicensed salesman negotiated the sale of real estate. The commission is payable to
- (a) the broker.
 - (b) the salesman.
 - (c) no one.
 - (d) an escrow holder.
130. Weldin lists his three-story dwelling for sale with Boone, a broker. It is in a district zoned for single families. Weldin had converted the second floor into a separate dwelling unit, by installing a kitchen and bathroom. Boone obtains a buyer, McLain. After the deal is closed, Weldin has moved to Canada. McLain is cited by the Zoning Board. What are McLain's rights?
- (a) He must pursue Weldin for damages.
 - (b) He can look to Boone for damages.
 - (c) McLain has no remedy.
 - (d) The city's action is invalid.
131. Under an exclusive right to sell listing, an owner may list his property for sale with how many brokers?
- (a) One.
 - (b) Two.
 - (c) Four.
 - (d) Any number.
132. How many copies of a listing should a broker make?
- (a) One.
 - (b) Two.
 - (c) Three.

- (d) Five.
133. Under an ordinary exclusive agency listing, with a definite expiration date, how many days of grace does the broker have in which to obtain a buyer after the termination date of the exclusive listing?
 - (a) 30 days.
 - (b) 90 days.
 - (c) 6 months.
 - (d) None.
134. A broker has a net listing of \$70,000 to the owner. If the broker receives a firm offer of \$70,000, the broker's commission would be:
 - (a) \$3,500.
 - (b) \$4,200.
 - (c) \$4,900.
 - (d) Nothing.
135. If a net listing specifies the broker's commission, it is
 - (a) void.
 - (b) voidable.
 - (c) valid.
 - (d) unenforceable.
136. An attorney-in-fact is the holder of
 - (a) a certificate as an attorney-at-law.
 - (b) power of attorney.
 - (c) appointment by order of court.
 - (d) decree from a court.
137. Two rival brokers claim the commission in a real estate transaction. It should be paid to
 - (a) the broker with whom the property was first listed.
 - (b) the broker who was the procuring cause.
 - (c) the broker who makes the first claim.
138. A salesman may lawfully obtain listings when
 - (a) he obtains a broker who will employ him.
 - (b) the salesman's application has been filed.
 - (c) the broker receives the salesman's license from the Commission.
 - (d) the salesman has passed his examination.
139. A broker finds a purchaser, acceptable to his owner. After the agreements are signed, the buyer and seller agree not to consummate the deal. The broker
 - (a) is not entitled to a commission.
 - (b) is entitled to commission only upon the earnest money deposited.
 - (c) is entitled to a full commission from the buyer.
 - (d) can collect full commission from the seller.
140. An owner who employs more than one broker at the same time, has given each broker
 - (a) unilateral listing.
 - (b) a multiple listing.
 - (c) an open listing.
 - (d) an exclusive listing.
141. Should the owner instruct the broker to misrepresent the existence of termites, the broker should
 - (a) do as instructed.
 - (b) not do as instructed.
 - (c) sue the owner.
 - (d) withdraw from the transaction.
142. Kline listed his property for sale with Fine on October 2, 1977 at \$32,000 for 60 days at 6% commission. Five days later, Fine produces a signed offer from Dean to buy the property at \$30,500. Actually, Dean is a front or "straw" man for Fine, and will be paid \$50 for his services when the transaction is closed. The property is deeded to Dean on December 20, 1977 and Dean deeds the property to Fine on December 26, 1977.

- Kline, upon learning what happened, can
- I. recover \$1,500 from Fine.
 - II. recover \$1,830 commission paid to Fine.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
143. Horne, a salesperson, had access to a number of property listings during his employment by Denton. Upon leaving Denton's employ to work as a real estate salesperson for Hartman, a competitor, Horne takes his listings to Hartman. Horne is guilty of
- I. conversion.
 - II. larceny.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
144. Rice lists his property for sale with Ritter at \$42,500, commission to be 7%. During the listing period, Ritter shows the property to Fields, who leases the property for 6 months, with an option to purchase at \$40,000. Shortly after the listing period expired, Rice sold the property to Fields for \$40,000. Under these facts,
- I. Ritter can recover from Rice.
 - II. Ritter can recover from Fields.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
145. An owner may list his property for sale with more than one broker, where he gives each broker a (an)
- (a) multiple listing.
 - (b) exclusive agency.
 - (c) open listing.
 - (d) deferred listing.
146. Brown Realty Co., owned by Lee Brown, negotiates a sale of an office building. In order to make the deal, Brown Investment Co., also owned by Lee Brown, lends the buyer \$100,000. In consideration thereof, the buyer gives Brown Realty Co. a written contract to manage the building for five years. At the end of one year, the buyer terminates the authority.
- (a) The contract is void, because it violates the statute of frauds.
 - (b) The contract is terminated, because it involves personal services.
 - (c) The contract is invalid, because it was not recorded.
 - (d) The contract is valid, because it is an agency coupled with an interest.
147. The first active step necessary to recover a commission is to
- (a) find a buyer.
 - (b) advertise the property.
 - (c) have a contract of employment.
 - (d) list it with the local Board's multi-list association.
148. Lawton, licensed as a broker, as an attorney and as an engineer, sued for a commission on the sale of a Dallas property. The property was listed verbally with him. (In Texas, a listing must be in writing.)
- (a) He can recover as a broker.
 - (b) He can recover as an attorney.
 - (c) He can recover as an engineer.
 - (d) He cannot recover.
149. Whelan, a broker, opened negotiations in November 1977 between the owner and a prospect upon property listed with his office, but failed to bring the parties to an agree-

ment. The listing expired January 28, 1978. In June 1978, the owner sold the property to the buyer. The broker claimed a commission.

- (a) The broker can recover.
 - (b) Broker cannot recover.
 - (c) Broker can bring a conspiracy charge against owner and buyer.
 - (d) Broker can file a lien against the subject property.
150. Gold gives Silver, broker, an oral listing on his residence. Silver obtains Brass, a buyer, upon Gold's terms. The agreement contains Silver's name as a witness to the Brass signature, and also has a notation in the lower left hand corner, "Silver, broker." The state of Nebraska requires a listing to be in writing. Silver sues for commission. Can he recover?
- (a) Yes.
 - (b) No.
 - (c) He can sue buyer.
 - (d) He can sue both seller and buyer.
151. Albert listed a dwelling in Miami for sale with Curtis at \$40,000, commission at 6 per cent. Curtis received a signed offer from Dale at \$36,500 on June 21, 1978, which he submitted by air mail the same day to Albert in Seattle. The letter was received by Albert on June 24, 1978. Albert accepted the agreement and air mailed a signed copy to Dale the same day, which was received by Dale, in Miami, on June 27, 1978. On June 23, 1978, Dale sent a telegram to Albert, revoking his offer, which was received by Albert on June 24, 1978. Under these circumstances:
- (a) there is a binding contract.
 - (b) there is no binding contract.
 - (c) Dale can sue for monetary damages.
 - (d) Dale can recover any expenses incurred.
152. Helen Myers gave an exclusive right of sale to Jack Erler, broker, of a farm property at \$2,000 per acre, or upon any other terms acceptable to the owner, for three years, with commission at 10 per cent of the sale price. Two years later, the owner sold the property to Dawson, who had been shown the property by Erler 14 months earlier. The sale was at \$1,650 per acre. In a suit the court held
- (a) that the three-year listing was an unreasonable restraint on alienation.
 - (b) Erler could recover a 10% commission.
 - (c) Erler could only recover his expenses.
 - (d) could recover on a quantum meruit basis.
153. Is there any economic justification of a broker in society?
- (a) Yes, since he renders services to the public.
 - (b) No, since he does not produce material goods.
 - (c) Yes, if he has other employment producing material goods.
 - (d) No, unless he has professional qualifications.
154. An "alter ego" relationship exists between
- (a) a broker and his salesperson.
 - (b) broker and owner.
 - (c) owner and salesperson.
 - (d) broker and buyer.
155. The Illinois anti-block-busting law prohibits solicitation for the purchase or sale of real estate on the basis of race. Harmon notifies the Blake Realty Co. that he does not desire to sell or list his property for sale. Blake, nevertheless, importunes Harmon to sell his home because the neighborhood is rapidly changing. Under these circumstances:
- I. Blake's license may be suspended or revoked.
 - II. Blake may be prosecuted criminally.
 - a. I only.
 - b. II only.
 - c. both I and II.
 - d. neither I nor II.

156. A broker's relation to an owner is governed by
- the law of equity.
 - law of agency.
 - respondent superior.
 - investiture.
157. A printed advertisement for a new development such as a subdivision is called a
- reservation.
 - prospectus.
 - nomenclature.
 - origination.
158. A real estate salesman may lawfully accept an extra commission in a difficult sale from
- an appreciative seller.
 - a thankful buyer.
 - the broker-employer.
 - the mortgage finance company.
159. Recovery of commission on a "quantum meruit" basis is commission expressed in
- a contract.
 - what the broker deserves, as determined in a court action.
 - the commission fixed by a local real estate Board.
 - commission determined by an arbitration proceedings.
160. Where a broker acts as an agent for both buyer and seller, which fact is disclosed to both, he can collect commission from
- seller.
 - buyer.
 - seller and buyer.
 - neither seller nor buyer.
161. Stone agreed to list a proposed subdivision tract, consisting of 30 lots with Clay, a broker, for a term of two years provided Clay lends him \$1,500 for engineering expenses, for two years, without interest. After the lots are laid out and the plan is recorded, Clay sells 4 lots during the first six months at \$3,000 each. Three months later, Stone notifies Clay that his listing is cancelled, since no further sales have been made. The cancellation is
- valid.
 - invalid.
 - the listing is renegotiable.
 - Clay can recover commission on the unsold 26 lots.
162. Banes, broker, had an open listing on Crane's property at \$55,000. Banes showed the property to Devlin, and discussed the terms of sale with him. He did not introduce Devlin to Crane, nor disclose Devlin's identity at any time. Devlin did not make an offer to Banes. Two days later, Banes checked with the mortgagee. He reported to Devlin, who told him he had already checked into financing. Four days later, Banes learned the property had been sold to Devlin. Banes sued Crane for a commission. Under these circumstances:
- Banes can recover from Crane.
 - Banes can recover from Devlin.
- I only.
 - II only.
 - both I and II.
 - neither I nor II.
163. A broker had an exclusive listing, dated October 3, 1977, expiring December 30, 1977. The buyer signs an option for \$5,000, to purchase the property at a price of \$100,000, on November 15, 1977. He executes an agreement to purchase the subject property on December 15, 1977, the deal to be closed on January 16, 1978. Under these circumstances:
- the broker is entitled to a commission only on \$5,000.

- II. the broker is entitled to a full commission on the \$100,000.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
164. Dolan gave an exclusive listing to Allen, who introduced Cullen to Dolan as a prospect. Eight days later, Allen's listing expired. Six weeks later the property was sold to Cullen through Baker, another broker. Allen sued for a commission.
 - (a) Allen can recover from Dolan.
 - (b) Allen can recover from Cullen.
 - (c) Allen can recover the usual listing fee from Baker.
 - (d) Allen can recover nothing.
165. A broker received a \$17,000 offer on a property listed with him at that price. He failed to disclose the \$17,000 offer, and only disclosed a \$13,000 offer, which he induced the seller to accept. Under these facts, the seller could
 - I. recover \$4,000 from the broker.
 - II. recover commission paid to the broker on the \$13,000 offer.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
166. A broker who has earnest money in his escrow account, may, after the deal is closed
 - (a) retain the commission money in his escrow account indefinitely, without interest.
 - (b) retain the commission money in his escrow account, indefinitely, so as to earn interest.
 - (c) immediately withdraw his commission, even though the deed and mortgage have not yet been recorded.
 - (d) withdraw one-half of the commission money, and leave one-half in the escrow account.
167. An earnest money receipt recites a deposit of \$1,000. The buyer gives the broker a post dated check in that amount. A Commission Auditor checks the broker's escrow account in the interim. The broker
 - (a) should have placed the check in his escrow account.
 - (b) should have opened up a special account in his accounting procedure.
 - (c) deposit the check in his personal account.
 - (d) should have notified the owner, when he received the check.
168. An investigator for the Real Estate Commission finds that Broker Williams has \$1,000 in his escrow account. There are no real estate deals pending.
 - (a) The escrow account will be approved and reported to the Real Estate Commission.
 - (b) The escrow account will not be approved.
 - (c) The escrow account will receive a qualified approval.
 - (d) The investigator should await further instructions from the Real Estate Commission.
169. In accepting a note as a deposit from a buyer, the broker should
 - (a) assume personal responsibility for payment of the note.
 - (b) place the note in his safe deposit box.
 - (c) state in the agreement that the deposit is in the form of a note.
 - (d) discount the note with this bank and obtain cash.
170. Where a broker negotiates a deal for \$18,000 and the agreement recites a \$1,500 deposit, but the buyer has only \$500 in cash, the broker should
 - (a) obtain a "hold" check from the buyer for \$1,000, dated one day before the closing date.
 - (b) obtain a note for \$1,000 due 10 days before the closing date.
 - (c) re-write the agreement and state a \$500 earnest money deposit.
 - (d) do nothing and require the buyer to pay the full balance due at the closing.

171. Brooks negotiates a real estate deal between Paige, seller and Gray, buyer. He receives a deposit of \$1,000. An irreconcilable controversy arises at the closing between Paige and Gray. Each demands the \$1,000 deposit. Brooks should
- (a) return the \$1,000 to Gray.
 - (b) give the money to Paige.
 - (c) turn the \$1,000 in to the Real Estate Commission.
 - (d) do nothing, await a suit and enter an interpleader.
172. A real estate listing is
- (a) real estate held for sale by auction.
 - (b) a list of all property held by one person for tax purposes.
 - (c) employment of a broker by an owner to sell or lease his property.
 - (d) an offer to buy property owned by a political subdivision.
173. A real estate salesman may lawfully pay a part of his commission to
- (a) any person.
 - (b) as a refund to the buyer.
 - (c) as a bonus to the seller for selling.
 - (d) another licensee.
 - (e) no one.
174. Salesman Sloan is licensed under broker Klaus but wants to work for broker Fair, so he
- (a) may start selling for Fair as soon as he places his license on display in Fair's office.
 - (b) may start selling as soon as he notifies the Real Estate Commission of the change.
 - (c) may start selling if Klaus writes the Commission that he has no objection to the change.
 - (d) may start selling for Fair as soon as the Real Estate Commission reissues his license to Fair.
175. An example of fiduciary relationship is that which exists between
- (a) broker and prospect.
 - (b) broker and client.
 - (c) broker and his salesman's prospect.
 - (d) broker and anyone.
176. Rose gave a written listing on certain property to broker Harris. Rose did not list this property for sale with any other broker for 90 days.
- (a) Harris had an open listing.
 - (b) Harris had an exclusive listing for 90 days.
 - (c) Rose cannot sell the property himself for 90 days.
 - (d) If Rose sold the property through another broker during the 90-day period, he would have to pay Harris a commission.
177. The Realtor Code of Ethics recommends an
- (a) open listing.
 - (b) exclusive listing.
 - (c) net-listing.
 - (d) parol listing.
178. When a broker shows a prospect a house listed with him for sale, he should
- (a) telephone the owner.
 - (b) post the premises.
 - (c) give the owner written notice of prospect's identity.
 - (d) send written notice to prospect.
179. A salesman can buy property listed for sale with his broker, where
- (a) he takes title in name of another person.
 - (b) he takes title in name of his broker, in trust for the salesman.
 - (c) he discloses his intention to the owner.
 - (d) he notifies the Real Estate Commission in advance.
180. Under the usual employment contract, a broker is entitled to his commission when
- (a) the deal is consummated.
 - (b) he produces a ready and willing buyer, upon seller's terms, even though the seller

- refuses to sign the agreement of sale.
- (c) he produces a ready and willing buyer at the listing price of the property, subject to a purchase money mortgage.
181. If a prospective seller asks a salesman at what price he should list his property for sale, the salesman should reply
 - (a) we will list at whatever price you suggest.
 - (b) at two and one-half times the assessed value.
 - (c) I will ask my broker to appraise it for you and list it at that figure.
 - (d) list it at 30 per cent above the present mortgage.
182. Whether to forfeit the deposit money, resell the property, or sue the buyer for performance, where the buyer defaults, is a matter for whom to decide?
 - (a) Broker.
 - (b) Vendor.
 - (c) Salesman.
 - (d) Independent agency.
183. Broker Dow negotiates a sale between Evans, seller and Fairchild, buyer, which contains a clause "Purchaser to obtain an F.H.A. insured loan in the amount of \$10,100." The lending institute requires certain repairs. Evans orally agrees to make the repairs, but later refuses. The deal falls through. Dow sues for a commission. He can
 - (a) recover from Evans.
 - (b) recover from Fairchild.
 - (c) recover from Evans and Fairchild.
 - (d) no recovery from either Evans or Fairchild.
184. A broker receives a \$1,000 earnest money deposit. At the closing, the seller demands the \$1,000 deposit and refuses to pay the broker his commission, because of personal differences. The broker should
 - (a) withhold the deposit in part payment of his commission.
 - (b) release the earnest money to the owner and sue him for the full commission.
 - (c) instruct the title company not to close the deal.
 - (d) file a complaint with the Real Estate Commission.
185. A broker owes certain duties to his principal. Which one of the following is not included:
 - (a) loyalty to his principal.
 - (b) must obey instructions.
 - (c) maintain the property.
 - (d) account for money and property.
186. A broker is asked to prepare an agreement of sale and deed for seller and buyer, for which he makes a charge of \$35.00. The broker can legally
 - (a) charge the seller only.
 - (b) charge the buyer only.
 - (c) charge both seller and buyer.
 - (d) charge neither seller nor buyer.
187. Where an agent breaches his duty to his principal, which one of the following would not apply:
 - (a) civil suit for damages.
 - (b) equity suit for an injunction.
 - (c) complaint to the Real Estate Commission.
 - (d) terminate the contractual relationship.
188. A property was listed with a broker at \$455,000 net to the owner. The broker obtained a buyer at that figure. The broker's commission is
 - (a) on a quantum meruit basis.
 - (b) 6%.
 - (c) 6% on the first \$100,000 and then graduated.
 - (d) nothing.
189. A broker negotiates a sale, for which he is paid a commission. He prepares the deed and

- handles the closing. For these additional services, he may charge
- (a) the seller.
 - (b) the buyer.
 - (c) both seller and buyer.
 - (d) neither seller nor buyer.
190. Ruth Stevens, owner, leased a property to the Sun Ray Oil Co. through Stone, a broker. The lease contained a "first right of refusal clause." Later she listed the property for sale with Stone, who procured a purchaser, Lemore, at \$27,500. An agreement of sale was signed by the owner and the purchaser, Mr Lemore, which provided that if Sun Ray exercised its right to purchase at the same price, the agreement with Lemore was to be null and void. Sun Ray exercised its right to purchase the subject tract at \$27,500. Stone sued for commission.
- (a) Stone can recover from Stevens.
 - (b) Stone cannot recover from Stevens.
 - (c) Stone can recover from Stevens and Sun Ray.
 - (d) Stone cannot recover from anyone.
191. A principal (owner) may have more than one agent under
- (a) a multiple listing.
 - (b) an open listing.
 - (c) exclusive listing.
 - (d) exclusive right to sell listing.
192. Alberts had an exclusive listing of \$40,000 on a property owned by John and Mary Thomas, at 6 per cent commission. As tenants in common, Mary deeded her interest to John's mother, in which John joined. No consideration passed. Alberts can recover a \$1,200 commission from
- I. Mary Thomas.
 - II. John and Mary Thomas.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
193. Where the state law requires a listing contract on real estate to be in writing, which one of the following must be in writing?
- (a) Contract between broker and another broker.
 - (b) Contract between broker and salespersons.
 - (c) Contract between broker and attorney at law.
 - (d) None of the above.
194. Adams negotiated the sale of property listed with him for sale, at 6 per cent commission, on June 16, 1977. He was not licensed at that time. However, he obtained his license prior to the closing on August 31, 1977, when the balance of the consideration was paid. Under these circumstances:
- (a) the broker can recover 6% commission.
 - (b) the broker can recover on a quantum meruit basis from the seller.
 - (c) the broker can recover on a quantum meruit basis only from the buyer.
 - (d) the broker can recover nothing.
195. Michaels listed his residence for sale with Holmes Realty for \$115,000. Holmes obtained Stone, as a prospect, telling him to make an offer of \$105,000, which he felt Michaels would accept. The offer was made and Michaels accepted. The transaction was closed and Holmes was paid a commission. Later, Michaels learned that Stone would have paid \$115,000, as his wife insisted that "no other house would do." Michaels sued Holmes. He can recover
- I. the \$10,000 difference in price.
 - II. the commission paid.
- (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
196. Albert lists property for sale with Broker Brown for \$11,000. The broker obtains a prospective buyer, Chase, at \$13,500. He has his mother-in-law buy the property at \$11,000 and she deeds the property to Chase at \$13,500. Albert paid Brown a commission of 6% on the \$11,000 deal. In addition to recovering the commission paid and the profit, Albert could
- (a) file a complaint with the Housing Authority.
 - (b) file a complaint with the Real Estate Commission.
 - (c) file an injunctive suit against Brown continuing to operate as a broker.
 - (d) picket Brown's office.
197. Terry lists property for sale with Yancy, a broker. Yancy enlists an engineer, Wise, who is not licensed, to help him find a purchaser. Wise refers Thomas to Yancy, who purchases the property at \$60,000. The agreement of sale states that a 4% commission is to be paid by Terry to Yancy and a 2% commission to Wise. Terry is liable to
- (a) Yancy for \$2,400 and to Wise for \$1,200.
 - (b) Yancy for \$3,600.
 - (c) Yancy for \$2,400.
 - (d) no one.
198. A broker's listing contract may not be terminated by the owner before its expiration date, where
- (a) the broker negotiated the sale to the owner.
 - (b) the broker has advertised the property.
 - (c) the agency is coupled with an interest.
 - (d) the owner desires to list the property with a more active real estate firm.
199. A property is listed with a broker at \$8,500. He finds a prospect who is willing to sign an offer at \$7,000, but will pay \$8,500, if the owner declines the offer. The broker should
- (a) buy the property himself at \$8,500.
 - (b) submit the \$7,500 offer.
 - (c) persuade the buyer to make his \$8,500 offer now.
 - (d) refuse to submit the \$7,500 offer.
200. Awarding a bonus to the salesman producing the highest volume of sales during the year is
- (a) a violation of the license law.
 - (b) a good incentive.
 - (c) contrary to public policy.
 - (d) invalid, if paid in cash.
201. If the seller makes the misrepresentation to the broker, and the broker has no duty to check:
- (a) the broker is still liable.
 - (b) the broker has no liability.
 - (c) the seller and the broker are both liable.
202. Baker, a broker, receives a listing from Cooper to sell a commercial site at \$45,000, at 6 per cent commission. He obtains Davis as a buyer. During the negotiations, he obtains a listing from Davis to sell a commercial site which he owns for \$40,000. He sells this property to Edwards at the listing price. Both deals are closed the same day. Baker claims commissions from Cooper and from Davis.
- (a) Baker cannot recover from Cooper or Davis.
 - (b) Baker can recover only from Cooper.
 - (c) Baker can recover only from Davis.
 - (d) Baker can recover from both Cooper and Davis.
203. A property is listed with Holmes. He places the listing in a multiple listing service to which he belongs. Fownes is a salesperson for Holmes, who contacts the ultimate buyer. Heath is a salesperson for Downes, also a broker member of the multi-list association.

Heath obtains a signed offer and an earnest money deposit of \$1,000. The check should be turned over to

- (a) Holmes.
- (b) Fownes.
- (c) Downes.
- (d) should be held by Heath.

204. Broker Crane had a written exclusive right to sell listing from owner, Dean, which expired on May 31, 1977. Following that date, Dean knew that Crane was still trying to sell the property and permitted Crane to show the property to prospects. On August 19, 1977, Dean sold the property to King, who earlier was shown the property by Crane. Dean refuses to pay a commission. Under the circumstances:

- I. Crane can recover from King.
- II. Crane can recover from Dean.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

205. Hugh Frank and Mary Frank, his wife, are the owners of a property. On May 2, 1977, they list the property for sale at \$55,000, 6 per cent commission, with Stone, Realtor, for 90 days. The listing is signed by Hugh Frank, but Mary Frank, who is present, does not sign the listing. On June 24, 1977, Jim Sales procures a buyer at \$55,000 cash. The Franks refuse to pay a commission.

- I. Stone can recover from Hugh Frank.
- II. Stone can recover from Mary Frank.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

206. A listing contract provided that a commission would be paid to the broker, if (1) the sale was consummated or (2) if not consummated due to a title defect. A sale was made, but the buyer refused to close the deal. Under these circumstances:

- I. the seller should sue the buyer for specific performance.
- II. the broker can recover a commission.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

207. A broker negotiated a sale and the agreement of sale, prepared by him, stated "Subject to satisfactory financing." Later, the buyer refused to go through with the deal and demanded the return of his deposit money.

- (a) The buyer must complete the deal.
- (b) The buyer can recover his deposit.
- (c) The buyer cannot recover the deposit.
- (d) The seller must provide adequate financing.

208. Where the buyer does not have sufficient money for the earnest money deposit

- I. the broker may loan him the broker's expected commission.
- II. the broker may take a note from the buyer for the amount needed.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

209. Steele, broker, negotiates a deal between Lynn, seller, and Marks, buyer, at \$21,000. The parties sign an agreement to that effect. Marks requires a \$20,000 mortgage, so Steele prepares a second agreement of sale, reciting a consideration price of \$24,900, which is signed by the seller and buyer. The second agreement is submitted to a mort-

gage company for a \$20,000 loan. Under these circumstances:

- I. Steele is guilty of a criminal act.
 - II. Lynn and Marks are guilty of a criminal act.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
210. Aiken, broker, negotiates a deal between Hendricks, seller, and Logan, buyer, at \$120,000 for a vacant tract of land. The deal drags on for 15 months and then is cancelled, because Logan is unable to secure the necessary financing for construction. Under these circumstances:
- I. Aiken can recover commission from Hendricks.
 - II. Aiken can recover commission from Logan.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
211. Adams gave an exclusive right to sell listing for property at \$30,000 for a term of 6 months. Commission was to be 6 per cent. The property, during the listing period, was taken by the state by eminent domain. Under these circumstances:
- I. the broker is entitled to a commission from Adams.
 - II. broker is entitled to a commission from the state.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
212. A broker had an exclusive right to sell the property for 90 days from the owner. During the 90-day period, the owner deeded the property to the mortgagee, because the latter threatened to foreclose the property, since it was in default. Under these circumstances, the broker can
- I. recover his commission from the owner.
 - II. recover his commission from the mortgagee.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
213. An agreement of sale, negotiated by a broker, was signed by his seller and buyer. The agreement names the broker, but he does not sign the agreement. Under these circumstances, the broker can recover commission from
- I. the buyer.
 - II. the seller.
 - (a) I only.
 - (b) II only.
 - (c) both buyer and seller.
 - (d) neither I nor II.
214. On February 15, 1978, Hadfield gave Baylor a 90-day exclusive listing on his home of \$32,500, commission to be 7%. The listing had an extender clause for 6 months, commission to be paid if the property were sold to any person with whom Baylor had negotiated during the 90-day period. Baylor submitted the property to Rowland on February 21, 1978, but he did nothing further. Rowland purchased the property from Hadfield on July 13, 1978 at \$30,000. Under these circumstances, Baylor can
- I. recover a commission from Hadfield.
 - II. sue Hadfield and Rowland for conspiracy.
 - (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
215. Trojan Realty negotiated a \$30,000 real estate deal. The listing agreement provides that any earnest money deposit is to be placed in the broker's escrow account. The broker received an earnest money deposit of \$1,500. His commission agreement is 5%. At the closing, the owner refused to pay the commission and demanded the earnest money deposit. Under these circumstances, the broker should
- I. keep the deposit money and await a suit by the seller.
 - II. file a complaint with the Real Estate Commission.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
216. Broker Flynn had a written listing from Simon, which expired on May 7, 1977. It was orally extended to August 8, 1977. Flynn continued negotiating with a prospect, with the knowledge and encouragement of Simon. In November, an agreement of sale was entered into between Simon and Flynn's prospect. The deal was closed. Flynn sued for a commission.
- (a) He can recover on a "quantum meruit" basis.
 - (b) He can recover only his expenses and advertising costs.
 - (c) He can recover his full commission.
 - (d) He cannot recover.
217. A listing agreement, dated February 15, 1978, provides that if the owner cancels the listing before the expiration date, May 16, 1978, the owner will pay the broker the agreed-upon commission in full. The broker proceeds to advertise the property heavily, and has shown it to five prospects, when the owner notifies the broker "to take it off the market at once," on June 1, 1978. Under these circumstances:
- I. the broker can only recover his advertising expenses.
 - II. the broker can recover a full commission.
- a. I only.
 - b. II only.
 - c. both I and II.
 - d. neither I nor II.
218. Broker Moore employs Sharp as a salesperson, under a written agreement that if Sharp leaves Moore's employ, he can never engage in the real estate business in Jefferson County. One year later, Sharp opens his own business in Jefferson county.
- (a) The restrictive provision is binding.
 - (b) The restriction is invalid.
 - (c) Sharp can open an office 20 miles from Moore's office.
 - (d) Moore can file a complaint with the Real Estate Commission.
219. Dunn lists his property for sale at \$18,000 with Flood, a broker, who is a member of a multi-list association. Green, a broker-member of the same association, sells the property to Harris, who gives Green a check for \$1,000, an earnest money deposit. Under these circumstances:
- I. Green should turn the check over to Flood, with consent of Harris.
 - II. Flood, in turn, should turn the check over to the multi-list association, since both are members.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
220. A licensed broker may lawfully pay part of his commission to which of the following?
- I. A licensed salesperson of another licensed broker.
 - II. A licensed civil engineer.
- (a) I only.

- (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
221. Adams, an unlicensed salesman, employed by Baker, negotiates sale of property in behalf of Clark, owner, to Davis, buyer. Davis now seeks to avoid the contract, on the grounds that Adams was unlicensed when the deal was made. Under these circumstances:
- (a) the agreement can be rescinded by Clark.
 - (b) the agreement cannot be rescinded by Clark.
 - (c) the agreement can be rescinded, if Clark pays Davis a penalty.
 - (d) the salesman must obtain a license immediately in order to have a valid agreement.
222. A property owned by Sefton is listed for sale with Hall at \$34,000. Hall obtains a buyer at that price, but before communicating that offer to Sefton, Hall obtains a second prospect, who, upon learning that Hall already has an offer at the listed price, offers \$34,500. Under these circumstances:
- I. Hall should notify Sefton only of the \$34,000 offer.
 - II. Hall should notify Sefton of both offers.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
223. Where the owner is paying for advertising, the broker should advertise the listed property in
- I. the broker's name.
 - II. the name of the salesperson who obtained the listing.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
224. A salesperson may lawfully solicit listings when
- (a) the broker in whose employ the salesperson will enter, signs the salesperson's application for a license.
 - (b) the salesperson has paid his initial fee for license.
 - (c) the salesperson has passed the state examination.
 - (d) the salesperson's license is received by the broker.
225. A broker negotiates the sale of a large industrial tract of land at a substantial price. After seven months, due to unsuccessful mortgage negotiations, the vendor and vendee agree to rescind the deal.
- I. The broker can look to the seller for a commission.
 - II. The broker can look to the buyer for a commission.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
226. The duty of a broker to keep the owner fully informed as to negotiations with a prospect, is because the broker is considered
- (a) a cestue que trust.
 - (b) a fiduciary.
 - (c) liable under the doctrine of respondent superior.
 - (d) amicus curiae to the owner.
227. Johnson, a salesperson, was using the automobile of his broker, Harrison, to drive a prospect to a dwelling listed for sale. The car was involved in an accident in which two young married men were severely injured. They sued for damages. Assume that Johnson was at fault and a substantial verdict was recovered. Under these circumstances:

- I. Johnson would be liable.
 - II. Harrison would be liable.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
228. Broker Quincy listed Taylor's home at \$49,000. He showed the property to Sloan, whose highest offer was \$45,000. Three months later, another broker, Stuart, showed the same property to Sloan, and received an offer of \$46,500, which Taylor accepted. Since Quincy first called Sloan's attention to the property and received a bona fide offer, he claims a commission. Under these circumstances:
- I. Taylor owes a commission to Quincy only.
 - II. Taylor owes a commission to Stuart only.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
229. Broker Randolph negotiated a five-year lease from Perkins, owner, to Martin, tenant, at a rental of \$500 per month, commission of 5%. After 28 months, Perkins sold the property to Garrick. Randolph claims a commission for 32 months. Under these circumstances:
- I. Randolph can collect the commission from Perkins.
 - II. Randolph can collect the commission from Garrick.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
230. The First National Bank listed a trust property for sale with the members of the City Multi-list Association at \$40,000, commission to be 7%. Holden obtained a signed offer at \$38,000. The bank refused the offer, stating that it had a higher offer from another prospect, but refused to tell Holden the amount of that offer. Later, the bank sold the property for \$37,300. Holden sued the bank for a commission, claiming that the bank's failure to disclose its offer prevented him from negotiating further with his prospect, and that the bank was derelict in its duties, as a trustee. Under these circumstances:
- I. the broker is entitled to a commission.
 - II. the bank will be surcharged for the net loss to the trust.
 - a. I only.
 - b. II only.
 - c. both I and II.
 - d. neither I nor II.
231. Brooks listed a commercial property with Fairchild at \$300,000 net to Brooks. Fairchild quoted a price of \$315,000 to Snyder, a prospect, who offered \$295,000. Later, Snyder purchased the property from Brooks at \$295,000. Under these circumstances, Fairchild is
- I. entitled to a commission of 6% on the sale.
 - II. entitled to recover on a quantum meruit basis.
 - (a) I only.
 - (b) II only.
 - (c) either I or II.
 - (d) neither I nor II.
232. A subdivision promoter, Reed, President of Lakeview, Inc., desires to employ Burns, a life insurance salesperson, who also is employed part time as a licensed real estate salesperson for Ajax Realty, Inc. To accomplish this objective, Lakeview, Inc., can
- (a) make Burns an officer of Lakeview, Inc., immediately.
 - (b) pay Burns a salary, instead of a fixed commission.

- (c) pay Burns a flat \$300 for the sale of each lot.
 - (d) none of these.
233. A licensed real estate salesperson, in Dallas, Texas, negotiated a very difficult sale of a home for \$32,000, and the seller promised to pay him an extra \$500. Since this salesperson had taken the buyers previously to see six other properties, and three times to see the property purchased, they promised to give the salesperson two season tickets for the home games of the Dallas Cowboys. Under these circumstances, the salesperson can lawfully
- I. accept the bonus from the seller.
 - II. accept the season tickets from the buyers.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
234. An owner need not pay the broker a commission if the owner sells the listed property upon which one of the following forms of listing?
- (a) Net listing.
 - (b) Multiple listing.
 - (c) Exclusive listing.
 - (d) Exclusive right to sell listing.
235. Where a property is listed through a multiple listing service, which one of the following receives the greatest share of the commission?
- (a) The listing broker.
 - (b) The selling broker.
 - (c) The multiple listing board.
 - (d) The salesperson of the listing broker.

The following questions have been prepared by representatives from National Association of Real Estate Brokers, Inc., National Association of Real Estate License Law Officials and National Association of Realtors.

True and False

(Answers to this section are on page 692.)

The Federal Fair Housing Law prohibits (or covers)

1. Statements by persons selling or renting dwellings which indicate a preference based on age. T F
2. Violent interference with the right to acquire property of all kinds. T F
3. The introduction of inharmonious elements into a residential neighborhood. T F
4. A broker or sales associate from making public speeches opposing equal housing opportunities. T F
5. A sales associate from attempting to induce a homeowner to list his house for sale by representing to him that minority group persons are moving into the neighborhood, even where the statement is accurate. T F
6. Lending institutions from charging persons of a certain race or religion higher mortgage interest rates. T F
7. Landlords from checking the credit references of minority applicants more carefully than those of white applicants. T F
8. Racial discrimination by home landscaping companies. T F
9. Housing discrimination against white persons because of their association with members of minority groups. T F
10. Any mention of race by a broker or associate while dealing with a prospective purchaser, including the giving of accurate and complete answers to racial questions asked by such prospects. T F
11. A real estate broker's racially discriminatory employment practices are of no concern to those agencies responsible for enforcing the fair housing laws. T F
12. A real estate broker is never responsible for the racially discriminatory acts of his sales associates. T F
13. Refusal by a broker to cooperate with another broker on the grounds of race is covered by the Federal Fair Housing Law. T F
14. U.S. Department of Defense regulations provide for placing housing off limits to servicemen when racial discrimination is found. T F
15. Sellers may lawfully discourage black buyers by requiring a higher down payment than that required of white buyers so long as the total asking price is the same. T F
16. Brokers or salespersons may never mention the subject of race to sellers and prospective buyers. T F
17. The Federal Fair Housing Law puts no obligation on multiple listing services—only on member brokers. T F

The Federal Fair Housing Law covers:

18. Only homes which been repossessed by FHA and VA. T F
19. Recreational, second-home communities. T F
20. All property, commercial and residential, if sold by a broker. T F
21. Discrimination on the basis of sex. T F
22. Discrimination on the basis of national origin. T F
23. Racial discrimination in home repair financing. T F
24. Racial discrimination in real estate board membership requirements. T F
25. White persons are protected by the Federal Fair Housing Law and have a right to bring suit when acts of discrimination deny them the opportunity to have neighbors who are members of minority groups. T F
26. White persons are protected by the Federal Fair Housing Law and have a right to bring suit when they receive threatening phone calls for having sold their home to a minority family. T F
27. A broker's assignment of associates to prospects according to the race of the prospects is lawful under the Federal Fair Housing Law. T F
28. A broker interested in attracting black prospects can never use media directed primarily at a black audience. T F
29. Undevelopd property zoned for residential use is *not* covered by the Federal Fair Housing Law. T F
30. The criminal provisions of the Federal Fair Housing Law *do not* provide for a fine or jail sentence for real estate brokers or salespersons who make housing unavailable because of race. T F
31. The criminal provisions of the Federal Fair Housing Law *do not* protect brokers or associates who are threatened with violence for showing a home to a minority prospect. T F
32. In a lawsuit under the Federal Fair Housing Law or the 1866 Fair Housing Law, actual damages are *not* available to a person who has been denied equal housing opportunities. T F
33. In a lawsuit under the Federal Fair Housing Law or the 1866 Fair Housing Law, injunctive relief to insure nondiscrimination in the future is *not* available to a person who has been denied equal housing opportunities. T F
34. The Federal Fair Housing Act provides mortgage subsidies and insurance. T F
35. The Federal Fair Housing Act applies only to real estate brokers and their associates. T F
36. The best way to deal with a minority prospect who makes an inquiry about the availability of homes is to refer him to a minority broker. T F
37. When a minority prospect calls or visits the office and makes an inquiry as to the availability of homes in a certain price range, the person servicing the prospect must ask the prospect whether he wants to see homes located in white residential areas. T F
38. When a minority prospect calls or visits the office and makes an inquiry as to the availability of homes in a certain price range, the sales associate servicing the prospect must refer the prospect to his licensed broker for servicing. T F
39. When a minority prospect makes an inquiry about a home located in an all-black residential area, the broker may assume that the prospect is interested only in homes located in black neighborhoods. T F
40. When a minority prospect makes an inquiry about a home located in an all-black residential area, the broker may assume that the prospect is testing him and refuse to show him any homes. T F
41. When a minority prospect makes an inquiry about a home located in an all-black residential area, the broker may assume that the prospect is unqualified for conventional financing and can be restricted to homes available under FHA or VA financing. T F

42. When a minority prospect makes an inquiry about a specific home located in an all-black residential area, the broker may assign the prospect to an associate who specializes in homes located in black neighborhoods. T F
43. The FBI investigates violations of the Federal Fair Housing Law by real estate brokers and associates. T F
44. Brokers and sales associates who engage in racial steering may be sued in federal court by the Attorney General of the United States. T F
45. Discrimination in housing against American Indians is prohibited by the Federal Fair Housing Law. T F
46. If a broker presents a contract for the listing price from a ready, willing, and able black buyer, and the offer is refused by the seller, because of race, the broker may sue the seller for his commission. T F
47. If a broker presents a contract for the listing price from a ready, willing, and able black buyer, and the offer is refused by the seller, because of race, the broker may advise the black prospect of his right to complain to the United States Department of Housing and Urban Development. T F
48. If a broker presents a contract for the listing price from a ready, willing, and able black buyer, and the offer is refused by the seller, because of race, the broker may warn the seller that his refusal is a violation of the Fair Housing Act. T F
49. A broker may exclude a certain home from showing to minority prospects if a covenant in the deed restricts the sale of the home to Caucasians. T F
50. A broker may exclude a certain home from showing to minority prospects if approval of sale is required by a homeowners' association. T F
51. A broker may exclude a certain home from showing to minority prospects if the broker knows that local lending institutions will not give a mortgage to minority buyers in the area in question. T F
52. A broker may exclude a certain home from showing to minority prospects if the broker can demonstrate that such a showing will subject him to a substantial loss of business in the area. T F
53. All church-owned houses and apartment buildings are exempt from the Federal Fair Housing Law. T F
54. Punitive damages in a suit brought under the Title VIII of the Civil Rights Act of 1968 are limited to \$1,000. T F
55. If a black prospect does not ask to be shown homes located in a white neighborhood, the broker or salesperson may legally assume that the prospect is not interested in such homes. T F
56. If a black prospect does not ask to be shown homes located in a white neighborhood, the broker has no obligation to show such homes to the prospect. T F
57. When an owner has exercised his exemption under the 1968 Fair Housing Law and designated his home as not available to black persons, a sales associate may lawfully refuse to show the home to a black prospect. T F
58. When a salesperson sincerely believes that a showing will cause panic in the neighborhood, he may lawfully refuse to show the home to a minority prospect. T F
59. When a minority prospect asks to see a home in a traditionally white area where no minority persons have bought before the salesperson should warn the prospect of the dangers of buying there and encourage him to look elsewhere. T F
60. When a minority prospect asks to see a home in a traditionally white area where no minority persons have bought before the sales associate should ask his broker to handle this prospect. T F
61. The Civil Rights Act of 1968 may be cited as the Federal Fair Housing Law. T F
62. In 1968, at the federal level, the Congress enacted the Fair Housing Law (Title VIII of the Civil Rights Act of 1968) which contains broad fair housing provisions. The Fair Housing Law forbids discrimination and discriminatory practices in connection with the selling or renting of residential real estate not only by owners but also by lenders, investors, builders, brokers, and real estate organizations and

- services. T F
63. Membership or participation in real estate organizations or multiple listing services cannot be denied on the basis of race, color, religion, sex or national origin. T F
64. Lending institutions which charge higher mortgage interest rates to persons of a certain race or religion are exempt from the Fair Housing Act because loans are made on the ability of the borrower to pay monthly installments. T F
65. Refusal by a broker to cooperate with another broker on the grounds of race is covered by the 1968 Fair Housing Act. T F
66. The real estate licensee is obligated to provide equal professional services to all persons regardless of race, color, religion, sex or national origin. T F
67. The question of equal housing opportunities for minorities at one time or another, has been the subject of concern of all three branches of the government—Legislative, Executive, and Judicial. T F
68. Racial restrictive covenants flourished in the land until 1948 when the Supreme Court in the cases of *Shelly v. Kraemer* and *Hurd v. Hodge* held that such covenants were unenforceable in both Federal and State courts. T F
69. Any mention of race by a broker or associate while dealing with a prospective purchaser, including the giving of accurate and complete answers to unsolicited racial questions asked by such prospects, violates the Federal Fair Housing Act. T F
70. "All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." This quotation is from the 1866 Civil Rights Act. T F
71. A real estate broker's racially discriminatory employment practices are of no concern to state law enforcement agencies. T F
72. Since multiple listing services are generally private organizations they may deny membership to persons because of race. T F
73. Sellers may lawfully discourage minority buyers by requiring a higher down payment than that required of white buyers so long as the total asking price is the same. T F
74. Violent interference with the right to acquire property of all kinds is prohibited by the Federal Fair Housing Act. T F
75. The introduction of inharmonious elements into a residential neighborhood is provided for in the opening preamble of the Federal Fair Housing Act. T F
76. A salesman may induce a homeowner to list his house for sale by representing to him that minority group persons are moving into the neighborhood if the statement is accurate. T F
77. Statements by persons selling or renting dwellings which indicate a preference based on religion are not allowed by the Federal Fair Housing Act. T F

Multiple Choice

(Answers to this section are on page 692.)

- Which of the following provisions will be found in the Federal Fair Housing Law?
 - A provision allowing for mortgage subsidies, insurance, and government lending procedures.
 - A provision that real estate licensees shall not discriminate in the sale of any real estate.
 - A code of ethics requiring brokers to follow the "Golden Rule."
 - A provision requiring all prospective buyers be given the same opportunity to select among available houses in their price range without restriction because of race, color, religion, sex or national origin.
- Which of the following is *not* covered by the Federal Fair Housing Law, but *is* covered

- by the 1866 Fair Housing Law?
- (a) Homes sold by a part-time real estate salesperson.
 - (b) An owner of a ten-unit apartment house who lives in one of the units.
 - (c) An apartment building rented to the general public, but owned by a bona fide religious organization.
 - (d) A single-family residence sold by the owner without a broker or salesperson and without discriminatory advertising.
3. Punitive damages in a suit brought under the Federal Fair Housing Law are limited to which of the following amounts?
- (a) \$100.
 - (b) \$250.
 - (c) \$500.
 - (d) \$1,000.
4. The criminal provisions of the Federal Fair Housing Law *do not*:
- (a) protect buyers and sellers whose rights to buy or sell a home are interfered with by acts or threats of force.
 - (b) provide for a fine or jail sentence for real estate brokers or associates who make housing unavailable because of race.
 - (c) protect brokers or associates who are threatened with violence for showing a home to a minority prospect.
 - (d) protect citizens who are forcefully prevented from speaking out against specific housing discrimination violations.
5. Which of the following practices is lawful under the Federal Civil Rights Law?
- (a) A broker's assignment of salesmen to prospects according to the race of the prospects.
 - (b) A broker's assignment of salesmen to prospects according to the race of the salesmen.
 - (c) A broker's assignment of salesmen to branch offices according to the racial composition of the neighborhoods in which the branch offices are located.
 - (d) None of the above.
6. Which of the following is the *best* response to sellers who have indicated that their homes are not to be shown to minority prospects?
- (a) "Don't worry, they probably won't want to see it anyhow."
 - (b) "I'm sorry, under these conditions, you'll have to sell without the services of a real estate broker."
 - (c) "I'll do my best, but I'll have to show it if one asks to see it."
 - (d) "All brokers must comply with the Fair Housing Laws; I cannot accept the listing on your property with that condition."
7. A broker has been charged with violating the provisions of the Federal Fair Housing Law which prohibits efforts to induce any person to sell or rent any dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, religion or national origin while soliciting for listings in a racially transitional neighborhood. Which of the following factors would least likely be considered in deciding if the Act had been violated?
- (a) The words used by the broker.
 - (b) The method and frequency of solicitation by the broker or his company in other neighborhoods.
 - (c) Questions about race asked of the broker by the prospective seller.
 - (d) Whether the person soliciting for a listing is a licensed real estate agent or an unlicensed speculator seeking to buy for himself.
8. Which of the following statements made by a real estate licensee soliciting a listing in a racially changing neighborhood violates the provisions of the Federal Fair Housing Law?
- (a) "You'd better sell while you can."
 - (b) "This area won't be the same a year from now."


- (c) "List with me; I have many customers who are interested in this area."
 - (d) Not enough information given to answer the question.
9. What is the Fair Housing "logo"?
- (a) A statement "Anyone can buy," which is required in *all* advertising of FHA reposessions.
 - (b) An advertising statement informing minority buyers of those homes which are available to them so they will not be embarrassed by asking for ones which are not available.
 - (c) A drawing of a house with an equal sign inside.
 - (d) A code used to indicate race on prospect cards.
10. Under which of the following conditions may a real estate company lawfully place advertisements for homes located in minority neighborhoods in media specifically directed toward that minority?
- (a) When advertising costs in such media are cheaper.
 - (b) When the same houses or homes in the same area are also advertised in media of general circulation.
 - (c) When the company also advertises representative homes from other than minority neighborhoods in the minority media.
 - (d) Never.
11. Which of the following advertising statements lawfully may *not* be used by a real estate firm interested in attracting black prospects?
- (a) "Soul Subdivision."
 - (b) "Integrated neighborhood."
 - (c) "No Discrimination."
 - (d) All of the above.
12. When a black prospect makes an inquiry about a specific home located in an all-black residential area, the broker lawfully may:
- (a) Assume that the prospect is interested in, among others, homes of the architectural style of the one inquired about.
 - (b) Assume that the prospect is interested only in homes located in black neighborhoods.
 - (c) Assume that the prospect is testing him and refuse to show him any homes.
 - (d) Assume that the prospect is unqualified for conventional financing and can be restricted to homes available under FHA or VA financing.
13. Under which of the following circumstances may salespersons lawfully refuse to show a home to a black prospect who has specifically asked to see it?
- (a) When the owner has exercised his exemption under the 1968 Fair Housing law and designated his home as not available to black persons.
 - (b) When the agent sincerely believes that such a showing will cause panic in the neighborhood.
 - (c) When the owner is out of town and has instructed the agent that no showings may be made in his absence.
 - (d) Never.
14. When a black prospect asks to see a home in a traditionally white area where no blacks have bought before, a real estate salesperson should:
- (a) tell the prospect the home is off the market.
 - (b) warn the prospect of the dangers of buying there and encourage him to look in an integrated neighborhood.
 - (c) show the home in the same manner as he would if any other prospect asked to see it.
 - (d) turn the prospect over to his broker.
15. If a black prospect does not ask to be shown homes located in a white neighborhood, a licensee:
- (a) has no obligation to show such homes to the prospect.
 - (b) may assume that the prospect is not interested in such homes.

- (c) need not service the prospect at all.
 - (d) may select homes for showing as he would for any other prospect.
16. When a minority prospect calls or visits the office and makes a general inquiry as to the availability of homes in a certain price range, the person servicing the prospect is required by law to:
- (a) show the prospect at least six listings.
 - (b) ask the prospect whether he wants to see homes located in white residential areas.
 - (c) show the prospect an equal number of listings in white and minority (or changing) neighborhoods.
 - (d) show him the same homes that would be shown to any other prospect making a similar inquiry.
17. When a white prospect inquires about a listing located in a racially changing neighborhood, it is legally permissible to say, assuming all statements to be true:
- (a) "I don't think you'd like that area."
 - (b) "You know where that is, don't you?"
 - (c) "I'll show it to you if you want, but, I wouldn't live in that area on a bet."
 - (d) "I don't think you can afford that house."
18. White persons are protected by the Federal Fair Housing Law and have a right to bring suit when:
- (a) acts of discrimination deny them the opportunity to have neighbors who are members of minority groups.
 - (b) they are evicted by a landlord for having minority guests in their home.
 - (c) they receive threatening phone calls for having sold their home to a minority family.
 - (d) any of the above occurs.
19. Under which of the following circumstances may a broker exclude a home from showing to minority prospects?
- (a) A covenant in the deed restricts the sale of the home to Caucasians.
 - (b) Approval of sale is required by a homeowners' association.
 - (c) The broker knows that local lending institutions will not give a mortgage to minority buyers in the area in question.
 - (d) None of the above.
20. Listing a home at an inflated price and requiring minority prospects to pay that price, but accepting a lower price from white prospects:
- (a) does not violate the fair housing laws because the home is still being made available to the minority prospect.
 - (b) subjects the owner and his agent to liability for money damages in a fair housing suit.
 - (c) is a violation of the law by the seller only.
 - (d) is illegal *only* if the purchase of the house is being financed through FHA or VA.
21. A broker obtained a ready, willing and able black buyer who signed an offer to buy a house at the listed price. Because of the buyer's race, the seller refused the offer. The broker may:
- (a) sue the seller for his commission.
 - (b) advise the black prospect of his right to complain to the U.S. Department of Housing and Urban Development.
 - (c) warn the seller that his refusal is a violation of the Fair Housing Act.
 - (d) do any of the above.
22. Which of the following requirements has *not* been included in a Federal Court Order in a suit brought under the Federal Fair Housing Law?
- (a) The inclusion of the phrase "equal housing opportunity" in advertising of homes for sale.
 - (b) A prohibition against showing homes located in black neighborhoods to black prospects.
 - (c) A prohibition against steering white prospects away from homes located in racially

- changing neighborhoods.
- (d) A requirement that salespersons be recruited, hired and assigned on a nondiscriminatory basis.
- 23. In a lawsuit under the Federal Fair Housing Law or the 1866 Fair Housing Law, which of the following remedies is *not* available to a person who has been denied equal housing opportunities?
 - (a) An award of actual damages.
 - (b) A permanent or temporary injunction.
 - (c) Money damages of a punitive nature.
 - (d) Revocation or suspension of the license of the broker or salesperson found by the court to have discriminated.
- 24. The "Mrs. Murphy" exemption in the Federal Fair Housing Law is applicable:
 - (a) after notice.
 - (b) to owner-occupied houses of worship.
 - (c) only to Mr. Murphy.
 - (d) to none of the above.
- 25. Real estate licensees who engage in racial steering may be:
 - (a) sued in federal court by the Attorney General of the United States.
 - (b) subject to investigation by the U.S. Department of Housing and Urban Development.
 - (c) subject to a private suit for money damages.
 - (d) subject to all of the above.
- 26. Refusal on the ground of race by a real estate broker to cooperate with other brokers is covered by which act?
 - (a) 1844 Civil Rights Act.
 - (b) Federal Fair Housing Law.
 - (c) 1973 Presidential Act.
 - (d) None of the above.
- 27. What is the best policy for a real estate licensee to follow concerning discussing the subject of race with sellers or prospective buyers?
 - (a) Race may be discussed when the facts are accurate.
 - (b) Licensees should never discuss race.
 - (c) Race may be discussed when the buyer is of the same race as the licensee.
 - (d) Race may be discussed at the time of accepting a listing.
- 28. Which of the following terms best describe the Fair Housing Act?
 - (a) Equal Opportunity.
 - (b) Integrated.
 - (c) Civil Liberties.
 - (d) All of the terms.
- 29. Discrimination based on the following considerations are prohibited by the Federal Fair Housing Act of 1968, except:
 - (a) national origin.
 - (b) home repair financing.
 - (c) age of a person.
 - (d) sex of a person.
- 30. A white person may bring an action for discrimination when denied which of the following rights?
 - (a) The right to have minority neighbors.
 - (b) The right to pick his neighbors.
 - (c) The right to be introduced to a new neighbor.
 - (d) The right to belong to a designated church.
- 31. The U.S. Supreme Court handed down one of the most famous decisions on fair housing in which of the following cases?
 - (a) Dred Scott vs. Sanford.
 - (b) Jones vs. Mayer Co.

- (c) Corregan vs. Buckley.
 - (d) Hurd vs. Hodge.
32. All of the following statements pertaining to equal housing opportunities are correct except:
- (a) all prospects are entitled to full information concerning availability of home financing.
 - (b) “blockbusting” or “panic peddling” generally does not occur in a transaction between a broker and a buyer unless the buyer is also a seller.
 - (c) unless they insist, white prospects need not be shown homes in racially transitional neighborhoods.
 - (d) the Federal Fair Housing Law equally applies to recreational and second home purchases.
33. All of the following acts are forbidden by the Federal Fair Housing Law except:
- (a) discrimination on the basis of national origin.
 - (b) racial discrimination in home repair financing.
 - (c) racial discrimination in real estate board membership.
 - (d) discrimination on the basis of age.
34. Any citizen injured by discrimination in housing practices under the Civil Rights Act of 1968 may:
- (a) institute a private action in a state or federal court for injunctive relief or actual damage.
 - (b) file criminal charges in federal court.
 - (c) file criminal charges with local law enforcement authorities.
 - (d) bring a civil action in a state Superior Court for specific performance.
35. Which of the following U.S. Supreme Court Cases is most often cited as authority for prohibiting discrimination on the part of owners of property?
- (a) Wilson vs. Stearns.
 - (b) Shaffer vs. Beinhorn.
 - (c) Jones vs. Mayer.
 - (d) There is a conflict of authority.
36. The practice of discrimination of race, color, religion, sex, or national origin, in housing accommodation is:
- (a) against public policy.
 - (b) unlawful.
 - (c) illegal.
 - (d) all of the above.
37. The fundamental basis for fair housing throughout the United States stems from the:
- (a) National Association of License Law Officials.
 - (b) first amendment to the U.S. Constitution.
 - (c) thirteenth amendment to the U.S. Constitution.
 - (d) fifth amendment to the U.S. Constitution.
38. The Statute of Limitations provides that the time within which a complaint under the Title VIII of the 1968 Civil Rights Act must be brought is:
- (a) 60 days from occurrence.
 - (b) 90 days from occurrence.
 - (c) 180 days from occurrence.
 - (d) one year from occurrence.
39. In Title VIII of the Civil Rights Act of 1968, Congress declared a national policy providing fair housing throughout the United States. This policy applies to which of the following:
- (a) single-family dwelling owned by private individuals who also own more than three such dwellings.
 - (b) multi-family dwelling of six units where the owner occupies one such unit as his residence.
 - (c) individually owned single-family residence offered for sale through a real estate

- broker.
- (d) all of the above.
40. Under the Civil Rights Act of 1968—persons complaining of discrimination in housing have the choice of which of the following remedies?
- (a) File a civil action in Federal Court.
- (b) File a civil action in state or local court.
- (c) File a complaint with HUD.
- (d) Any of the above.

41. This symbol  represents which of the following:
- (a) Home Builders Institute.
- (b) Equal Housing Opportunity.
- (c) Build America Better.
- (d) Society of Residential Appraisers.

AGREEMENTS OF SALE

THE RESPONSIBILITIES of a broker are much greater in preparing an agreement of sale than in preparing a listing agreement.

In a listing agreement, the broker acts as a principal party. The law is rather limited in its scope to the two contracting parties—broker and owner.

In an agreement of sale, the broker acts in the capacity of an agent for the owner. It is the owner and the purchaser, who are the principal parties. The broker's duties and responsibilities, as an agent, are considerably enlarged. The seller and buyer are also known, respectively, as vendor and vendee, and less often, as the contractor and contractee.

The broker, in preparing the agreement of sale, must tailor it to the needs of the two principal parties. These needs vary with each transaction.

An agreement of sale is a contract between two principals, one of whom is the seller and the other is the buyer. The broker prepares this contract, as agent of the party of the first part (owner). Although the broker is not a party to the contract, he may acquire important rights under it, if the agreement contains a clause which recognizes the broker as the one who negotiated the deal, and the seller agreed to pay him a commission for his services: *Herman v. Stern*, 419 Pa. 272 (1965), *W. D. Nelson & Co., Inc. v. Taylor Heights Development Corp.*, 207 Va. 386 (1966); *Mid-Continent Properties, Inc. v. Pflug*, 249 N.W. 2d 476 (Neb. 1977).

The function of a broker is to negotiate a valid contract of sale between his principal, the owner, and the buyer. In this connection the broker prepares the agreement of sale, which, to a large extent, makes the law by which seller and buyer are governed.

It is important that a real estate broker or salesman be fully cognizant of the responsibilities which he assumes in undertaking to draw an agreement of sale. The instrument fixes legal rights and obligations of the seller and the buyer. It must adequately protect his principal, the seller, and at the same time, protect the buyer, who may be engaging in his first real estate venture. A poorly drawn agreement of sale may not only lead to dissatisfaction and controversy, but to expensive litigation as well. In addition, the broker, who prepared the faulty agreement of sale, may find himself the defendant, not only in an action at law, but also in proceedings for revocation or suspension of license, on the grounds of incompetency. In many respects, the agreement of sale is more important than the deed, because it dictates and determines what goes into the deed.

If the agreement, prepared by the broker, is within the actual or apparent scope of the agent's authority, any ambiguity will be resolved against the owner. The broker's fundamental duty of loyalty to the owner is based upon their principal-agent relationship. Invested with a license by the state, it attests to the broker's good reputation and competency as a *professional*.

In *Yerkie, Jr. v. Salisbury*, 287 A. 2d 498 (Md. 1972), the court said:

Brokers and their salesmen ought to have sense enough to realize that many contracts of sale are important legal documents, the preparation of which ought to be left to lawyers. Quite often there is a great deal more to the drafting of a contract for the sale of land than filling in the blank spaces on a printed form.

Under the Statute of Frauds, which exists in every state, a contract for the sale of real estate must be in writing, in order to be enforceable: *Hayman v. Ross*, 22 N.C. App. 624 (1974). *Fleming v. Romero*, 342 So. 2d 881 (La. App. 1977). The object of the Statute, passed in 1676 (29 Charles II), was to close the door to numerous frauds and perjuries in contracts which could be enforced only upon no other evidence than the mere recollection of witnesses: *Haddock Construction Co. v. Snedigar Dairy*, 510 P. 2d 752 (Ariz. App. 1973). However, partial performance of an oral contract to convey real estate may remove that contract from the operation of the Statute of Frauds where there has been an earnest money deposit, the purchaser has gone into possession and made improvements to the property. Under such circumstances, equity would intervene and entitle the buyer to a decree of specific performance: *Zaborski v. Kutyla*, 185 N.W. 2d 586 (Mich. App. 1971). *Walker v. Walker*, 448 S.W. 2d 171 (Texas 1969). *Brotman v. Brotman*, 353 Pa. 570 (1946).

In the case of *Harris v. Potts*, 545 S.W. 2d 126 (Texas 1976), the court said that each of these three elements is indispensable, and they must all exist.

Legal requirements for agreement of sale

An agreement of sale is a contract *in writing* whereby one party agrees to sell and another to buy certain real estate under such terms and conditions as are therein set forth. It must be remembered that an agreement of sale is a contract. Hence, all the essential elements of a valid contract must be present; these are (1) offer and acceptance, (2) seal or consideration, (3) capacity of parties, (4) reality of consent, and (5) legality of object. Since the contract relates to real estate, an additional element, special formality, is also required. Offer and acceptance means there must be a "meeting of minds" upon the subject matter and terms of the contract: *City of Roslyn v. Hughes Construction Co.*, 573 P. 2d 385 (Wash. App. 1978). The terms of the contract must be precise and definite. It is the responsibility of the broker who undertakes to prepare the agreements to see to it that the form and substance of the contract will meet any legal challenge. Offer and acceptance may, and often do, arise from correspondence between the parties, so that a formal contract is never signed.

It is not necessary that any earnest money deposit be paid at the time the agreement of sale is signed, in order for the agreement to be valid and enforceable, as the mutual promise by the vendor to execute and deliver a deed and the concurrent promise by the vendee to pay for the same at the same time constitute good and sufficient legal consideration: *Cowman v. Allen Monuments, Inc.*, 500 S.W. 2d 223 (Texas 1973).

It is often difficult to determine whether a writing is a mere receipt or a sufficient agreement under the Statute of Frauds. If the memorandum contains the names of the parties and a definite enough description to identify the property and the terms of the sale, it will suffice.

Sometimes a broker will have the parties sign a preliminary agreement, such as an offer to purchase, although the advisability of using two separate instruments to do a single job is questionable when one is sufficient. Where there are conflicting clauses in the two papers, trouble may ensue, and it does not always follow that the terms of the preliminary agreement are carried over into the later one.

The case of *Tomkins v. France*, 21 Ill. App. 2d 227 (1959), is pertinent. In that case, the preliminary agreement provided that the parties would execute the usual Chicago Real Estate Board sales contract form, embodying the terms, within five days. The contract submitted was not on the Chicago Board form and called for an earnest money deposit of \$4,950, instead of \$2,000, stated in the preliminary agreement to purchase. The court held that the buyer did not need to perform and he was entitled to a refund of his \$2,000 deposit.

A binder, as the name implies, is an agreement to make a down payment for the purchase of real estate as evidence of the purchaser's good faith. It is preliminary to the formal agreement of sale. For example, a prospect inspects a "sample house" on a Sunday, likes it, and wants to be sure that he will get it, so he gives the broker or salesperson a check for \$100 or so as a deposit. An agreement of sale can be prepared the following day and the buyer can pay an additional amount to constitute the earnest money deposit. The case of *Picard v. Burroughs*, 304 So. 2d 455 (Fla. App. 1974) involved a suit for specific performance of a land sale contract where the purchaser made a binder payment of \$4,000. The Court denied relief because the binder agreement was too indefinite and ambiguous. Under the circumstances, the purchasers were entitled to a refund of the \$4,000 binder payment. Thus, one difficulty of a binder is that, too frequently, it is too brief to incorporate the essentials of an enforceable contract.

No particular form is necessary for an agreement of sale. It need only be signed by the vendor and need not be under seal. The memorandum or writing should contain the following information: (1) the names of the parties; (2) terms of the sale; (3) a description sufficient to identify the property; (4) the purchase price to be paid. A receipt for deposit money which embodies this data would suffice. Where the vendor is married, it is good practice to have the wife also sign even though the property is held in the name of the husband alone. This is true even if her name does not appear in the body of the agreement.

Sometimes a broker will use a memorandum agreement initially and later he will prepare a complete agreement of the terms; even though the memorandum agreement is signed by both parties, it is not binding where the parties agree that the terms should be spelled out in a subsequent agreement. An agreement to make an agreement is not enforceable, where material terms are left to future negotiations: *Ripps v. Mueller et al.*, 517 P. 2d 512 (Ariz. 1973). It is a contradiction in terms and imposes no obligations on the parties: *Kenimer v. Thompson*, 196 S.E. 2d 363 (Ga. 1973).

A writing providing that a particular piece of land, approximately 150 acres, to be conveyed is to be mutually agreed upon in a future agreement, was not enforceable: *Davison v. Robbins*, 517 P. 2d 1026 (Utah 1973).

The case of *Boekelheide v. Snyder*, 71 S.D. 470 (1947) was an action for specific performance by the buyer. The writing upon which the action was based read:

Received of H. H. Boekelheide \$50 to apply
on purchase of house and property of the old
Young house. Balance \$650.

Margaret Snyder

Does this memorandum satisfy the Statute of Frauds, as a written contract of sale? The Court held the writing insufficient. It must be complete in itself, containing all the terms of the contract. Oral evidence is not admissible to supply defects in a written contract, which must be in writing under the Statute of Frauds. Payment of \$50 did not constitute part performance.

The offer and acceptance must be definite. In a certain case, a broker prepared an agreement of sale, and the buyer paid \$1,000 deposit money, which was turned over to the seller. The buyer then sued the seller for the return of the money, claiming that the agreement of sale was inadequate, incomplete and ineffective. The provision in controversy related to a mortgage. The agreement said simply, "Subject to purchaser obtaining mortgage." It was silent as to the amount of the mortgage and all the related terms, such as the rate of interest, the duration of the mortgage, the size of monthly payments to be required, and whether or not the mortgagor had the right of anticipation. Clearly, the agreement lacked *definiteness*, the first essential in a meeting of the minds. It would have been preferable to have stated, "Vendee will pay cash to highest loan obtainable at 9 per cent." In this connection, a broker should be alert as to the responsibilities which he assumes when he, independently, represents or warrants to the buyer that he will obtain the necessary financing. If the broker is unable to produce the required mortgage with the result that the deal falls through and the buyer's deposit money is lost, the buyer has the legal right to sue the broker upon the latter's broken promise to produce the mortgage. It is considered unethical practice to require that the buyer finance the property through the broker *alone*, so that the buyer cannot look where he pleases for funds.

The same is true of the situation where the broker knows that the buyer must sell his present home in order to obtain funds necessary in the purchase of the new home. The broker, in good faith, may promise to sell the buyer's present home before the sale is consummated for the new home. If he fails to perform, the buyer can sue the broker, upon the latter's independent promise, for any loss he sustained. If the deal is contingent upon the buyer obtaining a mortgage or sale of his present home, the broker should write the contingency into the contract of sale, so that the owner will know that he has only a conditional sale, which may not materialize.

A written memorandum, to constitute an enforceable agreement, must disclose all essential elements of the sale of land, and cannot rest partly in writing and partly in parol. The court so stated in the case of *Colrodas v. Russell*, 289 So. 2d 55 (Fla. App. 1974), where the time of payment, manner of payment and whether cash or credit was omitted from the writing.

It is important to note that all prior commitments are merged into the deed, unless, by express contract, certain matters are held open to be completed at a later time.

A check for \$1,000 from a purchaser to a seller, bearing only the notation "For lot 100 Earnest Money" did not constitute contract for sale of land, since 100 did not define subject matter of the transaction: *Kenimer v. Thompson*, 196 S.E. 2d 363 (Ga. 1973).

In a certain situation, a broker negotiated a \$300,000 transaction and received a \$10,000 deposit, which was to be the broker's commission. There was a \$240,000 mortgage of record against the property. In referring to the mortgage, the broker stated in the agreement of sale, prepared by him, that the buyer was accepting the property "under and subject to the mortgage," in the amount then due of \$240,000.

The seller's attorney tendered a general warranty deed to the buyer, at the closing. In referring to the unpaid mortgage, the deed stated it was "Under and subject to the mortgage balance of \$240,000," which mortgage, the grantee *assumed and agreed* to pay, as part of the purchase price. The buyer refused to accept the deed

because it did not conform to the agreement of sale. The buyer was correct. The broker had rendered a disservice to his principal, the seller, from whom he expected a \$10,000 commission. Under the broker's mortgage clause in the agreement, the buyer would have suffered no personal liability in event of a mortgage foreclosure sale, and a deficiency judgment was entered in favor of the mortgagee. Under the mortgage clause in the deed, which was tendered, the buyer *assumed* the mortgage, and if a foreclosure ensued, the buyer would have been obligated for any deficiency judgment. After a lengthy controversy, the deal fell through and the broker lost a \$10,000 commission.

Once a deed is accepted, rights which the parties had under the agreement of sale are merged into the deed. No further action arises under the agreement of sale: *Dillahunt v. Keystone Savings Association*, 303 N.E. 2d 750 (Ohio 1973). However, a closing statement, accepted by seller and buyer, may modify the agreement of sale if the figures are at variance with the sales agreement: *S. G. Payne & Co. v. Nowak*, 465 S.W. 2d 17 (Mo. 1971).

A dated memorandum signed by owners, reciting merely that they had received from purchaser the sum of \$500 as deposit to purchase "Apt. at 20001 Conant, for \$94,000" was sufficient to satisfy the statute of frauds. The court decreed specific performance: *Klymshyn v. Szarek*, 185 N.W. 2d 820 (Mich. App. 1971).

The Statute of Frauds does not require that a writing be one instrument. It may be created out of separate writings, connected with one another by the internal nature of the subject matter: *Lalone v. Modern Album and Finishing Co., Inc.*, 331 NYS 2d 889 (1972).

A contract for sale of realty was held too vague and indefinite with respect to time within which balance of purchase price was to be paid, where contract stated that \$11,000 of purchase price was to be paid in three equal installments: *Cook v. Barfield*, 162 S.E. 2d 417 (Ga. 1968). An *oral* contract may give rise to an action for specific performance, where the buyer has paid part of the purchase price, gone into possession and made improvements to the property: *Walker v. Walker*, 448 S.W. 2d 171 (Tex. 1969). *Brotman v. Brotman*, 353 Pa. 570 (1946).

Authority of agent is limited

The broker is a *special* agent with *limited* authority. He is employed to obtain a purchaser for the owner. This employment, generally, cannot be enlarged to empower the broker to sign, as agent for the owner, a binding agreement of sale: *Peters v. Windmiller*, 314 Ill. 496 (1925). A listing contract, per se, containing the words of employment "to sell," does not confer such authority: *Gallant v. Todd et al.*, 111 S.E. 2d 779 (S.C. 1960). A broker without any express or special grant of power does not have the authority to bind his principal to a contract of sale: *Fleming v. Romero*, 342 So. 2d 881 (La. App. 1977).

An architect is the agent of the owner in supervising the construction work as it progresses and has rather broad authority in this capacity: *Huber, Hunt & Nichols, Inc. v. Moore*, 136 Cal. Rptr. 603 (1977). However, he cannot enlarge upon the terms of an agreement of sale already signed by the builder and the purchaser. Some printed listing contracts do authorize execution of a sales agreement by the broker, using such words as "and to contract in my name," or the like. Generally, this is not considered good ethical practice. Extenuating circumstances may dictate the use of such authority for the broker to sign as agent for the owner in the listing agreement—where, for example, the owner is going abroad for an extended period of time, his itinerary is uncertain, and he is anxious to have the property sold.

An agent exceeds his authority when he permits a purchaser to take possession of the premises before the deal is closed, no matter how sympathetic he may be to the buyer's needs—for example, where the buyer is moving from another state, and his furniture and household effects are already in transit. Often, the buyer will ask the broker permission to do some decorating, painting, or to make minor repairs before the deal is closed. Should the deal fail to be consummated, the broker may find himself the defendant in an action for expenses and damages by the disappointed purchaser: *Cryder Well Co. v. Brown et al.*, 136 N.W. 2d 519 (Iowa 1965). If the buyer wants some special privilege, the broker should refer him to the owner for permission.

A broker may bind his principal, if the act he committed is within the apparent or ostensible scope of his authority. The act committed must be such that it is related to the subject matter of the principal's contract and would appear to be within the agent's *actual* authority. However, the *affirmative* burden of proof rests upon the agent who asserts it against the owner.

Employment of a broker "to sell" property would not be enlarged to permit a broker to enter into a binding agreement of sale for the owner: *O. L. Hamilton v. Booth*, 332 S.W. 2d 252 (Ky. 1960).

In the case of *McDonald v. Cullen*, 559 P. 2d 506 (Or. 1977), a buyer brought an action for specific performance. The sales agreement involved a loan commitment, to be approved by May 2, 1975. However, no loan was approved or commitment made. On May 2, 1975, the broker submitted to the buyer a document, entitled "Contingency Release," stating that the loan approval clause had been met to the satisfaction of the purchaser. The defendant owners never authorized this Release, nor did they receive a copy. The Court held that the purchasers were not entitled to specific performance as the agent had exceeded his authority. Authority to collect interest on a mortgage would not authorize the broker to collect payments on the principal: *Shay v. Schrink*, 335 Pa. 94 (1939).

Ambiguity construed against owner

As stated earlier, since the broker is the agent for the owner, an ambiguous agreement of sale, executed by buyer and owner, would be construed most strongly against the owner. In the case of *Baker v. Leight*, 370 P. 2d 268 (Ariz. 1962), the defendant broker prepared a deposit agreement and receipt, which stated that the buyers were "to assume an existing mortgage of approximately \$52,000, payable at approximately \$518.39, including 7% interest. . ." The seller wrote in a modification, among others, viz. "5. The purchaser is to assume the legal obligation for the first mortgage." These modifications were accepted by the buyers. Later the parties became aware of the fact that the first mortgage in question contained the following clause:

16. It is expressly understood and agreed that this mortgage shall become due and payable forthwith at the option of the Mortgagee if the Mortgagors shall convey away the said premises or if the title shall become vested in any other person or persons in any matter whatsoever.

This mortgage was a matter of record prior to execution of the agreement of sale. When the buyers learned of the clause in question, they refused to go through with the deal. While other issues were also involved, the court said:

It was the seller's obligation to procure the waiver of clause 16 from the mortgagee and to come forward immediately upon being informed that the buyer elected to rescind because of the fact that clause 16 constituted a material breach of the contract. This the seller did not do.

The buyer made out a prima facie case. It was reversible error to direct a verdict for the defendants.

The Supreme Court remanded the case for further hearing.

In the case of *Beattie-Firth, Inc. v. Colebank et al.*, 143 W.Va. 740 (1958), the broker lost his suit for a commission since his listing contract provided that he was to receive a commission (1) if a buyer was obtained and the sale was consummated, or (2) if the sale was not consummated by reason of any default of the seller. The broker obtained a buyer. The sales agreement, prepared by the broker, recognized the plaintiff as the broker in the deal and the seller agreed to pay him a commission, subject to the two conditions stated above. The *buyer* defaulted and the seller refused to sue the buyer for damages or specific performance. Since the deal was not consummated and the seller was not at fault, neither of the two conditions was satisfied and the broker could not recover. The court also held:

... we would hesitate to enunciate a rule which would require a vendor whose promise is so conditioned to engage in expensive and perhaps fruitless litigation in order that a broker might become entitled to a commission. A burden so onerous cannot be imposed by implication.

Owner can recover for misconduct of broker

The law is well established in every state that the broker is a fiduciary and that the law exacts a high degree of loyalty and fidelity towards his principal. This rule also applies to a salesman and holds the broker responsible for the salesman's acts, where the broker connives with his salesman, is cognizant of what is going on, or benefits from an illegal transaction. The case of *Security Aluminum Window Mfg. Co. v. Lehman Associates, Inc. et al.*, 108 N.J. Super. 137 (1970), involved an action by seller against a broker and his agent for compensatory and punitive damages in relation to a sale of real property. The appellate court held, inter alia, that punitive damages should have been assessed against both the real estate broker and his salesman in relation to a fraudulent scheme involving the sale of property in which the seller was led to believe that an offer of \$25,000 had been made for the property where in fact an offer of \$50,000 had been tendered by another party.

Dual contracts

In connection with the necessary financing of a purchased dwelling, attention is called to a rather extensive and dangerous practice in real estate circles. It is the use of dual contracts, sometimes referred to as "kiting" or "ballooning." This is the situation where a purchase contract is executed by buyer and seller for the true consideration price of \$16,000. Buyer requires a mortgage of \$15,000. A second set of purchase contracts is then executed by the seller and buyer at a fictitious consideration price of \$18,000. It is the \$18,000 agreement which is submitted to the lending institution for a loan of \$15,000. Very often the dual agreements are suggested by the real estate broker with the assurance to the parties that "it's done all the time."

Not only is this practice considered unethical and violative of the Realtor's Code of Ethics, but it constitutes a material violation of the license law, and is a criminal offense, as well. The broker, buyer, and seller and lending institution officer are all subject to criminal prosecution. Texas and Colorado make such practice a misdemeanor under State law. The Federal Act of June 25, 1948 makes it a federal crime for any person to make a false statement in applying for F.H.A. mortgage insurance, or "to aid or abet" such action. The seller, broker, buyer and even the mort-

gage lender, who are participants in a dual contract arrangement, are vulnerable to a criminal charge: *United States v. Hawkins et al.*, 205 F 2d 837 (Ky. 1961). *State Real Estate Commission v. Bongiorno*, 45 D & C 392 (Pa. 1968).

Offer may be revoked

An offer is not irrevocable. It can be withdrawn at any time before acceptance. An element in a preliminary offer to purchase contract is that it usually provides that the seller is to have a certain period of time within which to accept the offer—three, five, seven or ten days. The prospective buyer is not bound to keep his offer open for the designated period of time. He can withdraw the offer at any time, if the seller does not accept. Also, where a formal agreement of sale is prepared, which the buyer signs, it is still only a naked offer, which can be withdrawn at any time before acceptance. Thus, a broker should act promptly in seeing to it that his owner signs the agreement as soon as possible. It takes two parties to make the contract—signatures of buyer *and* seller.

It is equally important that a broker deliver the seller's signed agreement to the buyer as soon as possible. In other words, it is not only necessary that the seller accept the buyer's offer by signing the agreement, but the acceptance must be *communicated* to the buyer. Until the acceptance has been communicated, the buyer can withdraw his offer of purchase, even though he has signed the agreement of sale.

In the case of *Reynolds v. Hancock*, 53 Wash. 2d 682 (1959), a broker sued the buyer for a commission upon the strength of a clause in an offer to purchase, which read:

This offer is made subject to approval of the seller by midnight of March 27, 1957. In consideration of agent submitting this offer to seller, purchaser agrees with the agent not to withdraw this offer during said period or until earlier rejection thereof by seller.

After signing the offer to purchase, the buyer, prior to midnight of March 27, 1957, notified the seller, in California, that the offer was withdrawn. The Court held that there was no consideration to the buyers from the broker not to withdraw the offer prior to its expiration date. The broker could not recover. Using language that the offer is made *irrevocably* for a certain number of days may have some psychological effect, but it would not prevail in a suit at law.

Once the offer is signed by the owner, a binding contract is created. The offer must be accepted in order to have a binding contract. Thus, an offer may be accepted, or the offer may lapse through passage of a period of time (non-acceptance by seller), or it may be withdrawn before acceptance.

Anson on Contracts has compared an offer to a train of gunpowder. Once the match is applied, it produces something which cannot be undone or recalled, unless the gunpowder has lain until it has become damp, or the man who laid the train removes it before the match is applied; so an offer, once it is accepted, cannot be undone or recalled, but the offer may lapse through passage of time, or the man who made the offer may withdraw it *at any time* before acceptance. Thus a broker should stress to his owner the importance of signing the agreement upon his terms, as soon as possible.

Counter-offer constitutes a rejection

An acceptance must meet the terms of the offer in order to establish an enforceable contract. If a potential buyer, for example, receives an offer from the seller for the sale of the seller's home at \$40,000, and, in reply, injects certain conditions that

the carpeting and draperies throughout the house are to be included in the sale, this is a counter-proposition and constitutes a rejection of the offer. An offer once rejected is gone forever, and cannot be accepted later, unless the offeror is receptive. A counter-offer, is, in effect, a *new* offer: *Ardente v. Horan*, 366 A. 2d 162 (R.I. 1976).

Prospective purchasers of certain property brought suit against the prospective seller to recover a \$1,000 earnest money deposit in the case of *Stearns v. Western*, 252 N.E. 2d 126 (Ill. 1967). The offer to purchase was subject to the condition that vendees were able to obtain a \$17,000 mortgage at interest not to exceed $5\frac{3}{4}$ per cent for not less than 20 years, within 10 days. The buyers were unable to obtain outside financing upon those terms within the 10 days. The vendor then offered a mortgage loan, specifying five additional conditions over the above, not shown to be matters of custom and usage. The court held this constituted a counter-proposition and the buyers were entitled to a refund of the deposit money: *Pravorne v. McLeod*, 383 P. 2d 855 (Nev. 1963).

Where the buyer withdraws his offer before acceptance by the owner, he is entitled to a full refund of his earnest money or deposit, without any "strings" or conditions attached whatsoever. In one case, before returning the earnest money, the broker sought to have the buyer sign a memorandum that if he *ever* bought a property in the future, it would be through that broker. The memorandum is unethical and clearly unenforceable. In 8 Amer. Juris. 1060, Sec. 130, it is said:

If earnest money is paid to a broker, and the contract is broken by the principal, the broker, notwithstanding that he has disclosed his principal, is liable to the buyer for a refund of the deposit money, unless he has in good faith paid it over to his principal. The fact that a broker has a claim against his principal is no justification for his refusal to return the deposit money. (*Gosslin v. Martin*, 56 Ore. 281, 107 P. 957.) (*Perry v. Thorpe Bros., Inc.* 267 Minn. 29 (1963).)

However, in order to avoid any charge against himself, the broker should not ignore the express instructions of his principal. In *Polette v. Wall*, 256 S.W. 2d 283 (Mo. 1953), the broker returned the deposit to the purchaser without the knowledge or consent of the sellers. The Missouri Court held that, by doing so, the broker exceeded his authority. In the Washington case of *Somers Co. v. Pix*, 134 P. 932 (1913), the broker waived his commission by allowing the purchaser to withdraw the earnest money, because of an objection to the title, which did not render it unmarketable.

If the offer to purchase is withdrawn before it is accepted by the owner, the buyer is entitled to a refund of his deposit *immediately*.

The case of *Hicks v. Howell*, 203 Va. 32 (1961) involved an action by a buyer against the owner and the broker to recover an earnest money deposit. The court held that the brokers who received the purchase money deposit as agent for the sellers could not apply such funds to the payment of commission where the vendors were unable to deliver a marketable title, as required. The brokers were held liable to the buyers for the amount of such deposit.

It is not necessary that any deposit money be paid at the time the agreement of sale is signed by the buyer and seller. The mutual concurrent promises that the buyer will pay a certain sum of money to the seller on a specific date and that the latter will execute and deliver a proper deed to the buyer on the same specified date, constitute good, sufficient legal consideration. A broker or salesman would be rendering a disservice to the owner if he did not require a down payment from the buyer as evidence of his good faith. The deposit should be in a sufficient amount to

afford the seller financial protection, in case the buyer defaults. And yet, too many licensees will accept a \$500 deposit on a \$25,000, or more, dwelling. Such a deposit falls far short of commission involved in the transaction. While it is true that the seller can sue the buyer for performance, the average seller is reluctant to engage in litigation. The size of the down payment should be commensurate with the amount of the consideration price for the property. A 10% earnest money requirement upon the signing of the agreement of sale is reasonable. The time for closing is also a factor to be considered in connection with the size of the hand money deposit. If the deal is to be closed more than 30 days from the date of the agreements, a larger down payment should be obtained as a protection to the seller, since the real estate market might change in that period. It often happens in real estate practice that a buyer does not have cash funds available for a 10% deposit, or even a 5% deposit. For example, in the purchase of a home for \$17,500, the buyer does not have ready cash available for more than \$200. It would be satisfactory for the broker to prepare a contract of sale at \$17,500, with a cash deposit of \$200, upon the signing of the contract. However, he should further provide that the buyer agrees to pay an additional sum of \$1,300 or \$1,800 within thirty days thereafter, *which date is of the essence of the agreement: Cowman v. Allen Monuments*, 500 S.W. 2d 223 (Texas 1973).

Earnest money deposit

The agreement should provide more than merely that the earnest money deposit shall be retained by the vendor as liquidated damages in case the buyer should fail or refuse to consummate the deal. The vendor should be afforded three alternative remedies:

1. sue the buyer for specific performance of the contract.
2. the right to resell the property and sue the buyer for any loss on the resale.
3. retain the deposit money as liquidated damages.

A suggested clause would read:

Should the buyer fail to make settlement, as herein provided, the sum or sums paid on account of the purchase price, at the option of the seller, may be retained by the seller, either on account of the purchase price, the resale price, or as liquidated damages. In the latter case, the contract shall become null and void. In the latter event, all monies paid on account shall be divided equally between the seller and the broker, but in no event shall the sum paid to the broker be in excess of the usual rate of commission due him.

The case of *Simmons and Associates v. Urban Renewal Agency*, 497 S.W. 2d 705 (Ky. 1973) involved a suit to recover a deposit of \$23,425 on the contract to purchase land for \$475,000. The contract was dated April 25, 1965. The agency extended the time for submitting financing plans on eight separate occasions, over a period of 641 days. The court held that the retention of the deposit money as liquidated damages, under the contract, would be enforced.

Broker's responsibility for deposit money

It is important that the *listing* contract include a clause:

The owner hereby agrees that all deposit money paid on account of the purchase price shall be retained by the within broker, in escrow, until the transaction is consummated or terminated.

The question of who is entitled to the earnest money or down payment frequently arises when the buyer defaults in performance. The broker mistakenly believes that, if he holds the deposit money, he is entitled to his commission out of this fund. It must be remembered that the broker is acting in a representative capacity, as agent for his principal, the owner. It thus appears that the money belongs to his principal. Under his employment by the owner, the broker has contracted to produce a purchaser, *ready, able, and willing* to buy. It would not appear that the agent has met his legal responsibilities if his purchaser is unwilling to complete the deal. It may be contended that, when the owner signs the agreement, he has placed his stamp of approval upon the purchaser, accepted him, and, upon the latter's default, must pursue him in a court of law for performance. The question is highly controversial although there are court decisions recognizing the broker's rights to his commission out of the deposit money held by him. However, if the buyer is pecuniarily unable to complete the transaction, litigation is futile, and the broker has not earned a commission. Where the agreement provides that the broker is to be paid his commission *upon delivery of deed*, he is not entitled to any sum under the circumstances outlined. Such a clause reads: "It is understood that Packer & Co. are the sole moving cause of this sale, and the vendors agree to pay said Packer & Co. a commission of five per cent of the full purchase price, said commission to be payable upon delivery of deed." The clause identifying the broker (Packer & Co.) as the broker negotiating the deed protects the broker against *both* buyer and seller, if the deal is completed, since it constitutes a *warranty* by both principals that Packer & Co. brought about the sale.

Many listing contracts in current use provide: "A deposit made, if forfeited by the buyer, shall first apply to the broker's commission; the balance, if any, shall belong to the owner."

While a broker is certainly entitled to a return for his efforts, good conscience requires that it shall not be at the expense of an innocent principal. Suppose the clause in question is used and the broker obtains a purchaser for a property at \$10,000, and collects a deposit of \$500. Later, the buyer defaults and forfeits the deposit money. Should the broker be permitted to retain the *entire* deposit as commission on the ground that the owner has a legal right to sue the defaulting buyer, even though litigation may prove futile? It is scarcely ethical that the broker should keep all the money paid on account of the purchase of the owner's property, and the latter required to pursue litigation, entailing additional expense of costs and attorney's fees, for recovery of a judgment which may be uncollectible. In addition, the property may be "tied up" for a considerable period of time from the date when the agreements were signed. Fair dealing requires that the down payment be divided equally between broker and owner, up to an amount where the broker receives full payment of his commission.

Deposit money in escrow account

Most states, by law, or by rule and regulation of the Commission, require that the broker keep all deposit monies in an escrow or trustee account. This does not mean that a broker must open a new account every time he receives an earnest money deposit. One trustee or escrow account will suffice, but it must be used only for the deposit of monies, belonging to others, which come into his hands through some real estate transaction. Such funds should be held inviolate until the deal is closed. A broker is not entitled to use such funds for personal uses. The theory that he may properly do so up to the amount of his commission in the particular deal,

pending the final closing, conclusion or settlement of the transaction does not apply.

Mishandling of deposit money has been a prime source of complaints to Real Estate Commissions in recent years. As a result, states, by statute, rule or regulation, or both, regulate the subject. Guide rules laid down require:

1. Broker must retain deposit money in a separate custodial account until transaction is consummated or terminated.
2. Every real estate salesman must promptly turn over deposit money received by him to his broker.
3. Under no circumstances shall a broker permit any advance payment of funds to be deposited in his business or personal account, or to be commingled with any funds he may have on deposit.
4. Custodial or trust fund account must provide for withdrawal of funds without previous notice.
5. Must keep complete records, showing the date and from whom he received deposit money, the date deposited, the dates of withdrawal and other pertinent information.
6. Broker executes a consent to bank permitting Commission representative to examine bank records.

One of the grounds relating to deposit money contained in the Pennsylvania license law for disciplinary action is Sec. 10 (11) failure to comply with the following requirements. . . "(v) Every real estate broker shall keep records of all funds deposited (in escrow accounts). . . All such records and funds shall be subject to inspection by the Commission." In the case of *State Real Estate Commission v. Roberts*, 271 A 2d 246 (Pa. 1970), the Supreme Court, in a 5—2 opinion, held that under the statute, the Real Estate Commission was authorized to suspend the license of a broker who refused to permit an investigator to conduct an inspection of broker's escrow account, without a warrant or subpoena, and even though no complaint had been filed by a member of the public.

Pursuant to this refusal, the Commission, upon its own initiative, issued a citation for hearing. The broker's contention was that the Commission violated his constitutional rights against self-incrimination and unreasonable search and seizure. The court said:

However, the statute clearly states that the Commission may upon its own motion. . . investigate any action or business transaction of any licensed real estate broker or real estate salesman. We believe "any action" means "any action," not just one where wrong-doing is suspected; otherwise the Commission could not properly exercise its function of the comprehensive regulation of the business of selling real estate to others.

The escrow of trust funds and maintaining records

Real estate brokers and their salespersons regularly come into possession of funds belonging to others and hence are trustees for such funds. Such trusteeship may exist for varying periods of time. As trustees, brokers have an exacting responsibility of handling such funds in a manner which will adequately protect the funds and so as not to destroy the trust nature of the funds, possibly making them subject to attachment, as could happen to the broker's personal funds. To this end, most states have enacted legislation regulating, at least to some extent, the handling of other persons' funds. Practically all states require real estate brokers to maintain separate bank accounts as depositories for trust funds with such accounts clearly

designated as trust or escrow accounts. The real estate commissions of many states make periodic examinations of real estate trust accounts.

The proper handling of trust funds requires adequate record-keeping. The complexity of the records required depends largely upon the volume of the broker's business and may range from computerized accounting to simple bookkeeping. A bookkeeping system which will clearly reflect the financial history of a real estate transaction is a necessity. A minimum system will include: (a) a separate bank account designated a real estate trust or escrow account; (b) pre-numbered checks for making disbursements from the trust account; (c) a pre-numbered receipt book for writing receipts when funds are received (other than funds received with an offer to purchase when such offer includes a receipt); (d) three-column bookkeeping forms for use in compiling a bookkeeping record for each real estate sale or for each principal for whom real property is managed.

Adequate trust account record-keeping begins with the drawing of an offer to purchase which should very accurately provide the details of any earnest money deposit. If the earnest money deposit is a check, it should be clearly stated; if cash, it should be recorded as cash; if a note, it should so state and include instructions about who will be holding the note and where it will be retained. When earnest money deposits are in the form of securities or other items of value, detailed instructions for holding and safeguarding them should be supplied. All of the details concerning the earnest money deposit should be fully disclosed to the seller at the time he considers accepting an offer. For example, should an offer state that the broker has received \$500.00 cash as an earnest money payment when in fact he has received a check in the amount of \$500.00, which the buyer does not want to be deposited until closing, then the seller does not have all of the information which he should have before considering the offer. Full disclosure of all financial details is basic to handling trust funds properly.

It should be noted that a bookkeeping system is a record of events as they occur and hence should be developed on a continuing basis with each entry being recorded at the time it transpires. There should be no delay in depositing cash or checks in a trust account. Such deposits should be made not later than the next banking day after they are received, unless, of course, an offer to purchase provides specific instructions about handling the funds.

In the case of *Eggerling v. Cuhel*, 246 N.W. 2d. 199 (Neb. 1976), the buyer signed an agreement to purchase a Knox County farm, on May 8, 1969, and gave a salesman of the Thor Agency a deposit for \$4,000. This check was turned over immediately to his broker and deposited in the broker's trust account. The sellers signed on May 19, 1969, and received a trust account check for \$2,300, balance after deducting \$1,700 commission. The broker and salesman split the commission evenly. The property was sold under an existing FHA mortgage. Possession was to be given on January 1, 1970. The buyers found they could not proceed under FHA regulations. Negotiations continued without success until 1972. In May of 1972, the sellers sold 57 acres of the property to another buyer. The Eggerlings then brought suit against the seller, broker and salesman. The court dismissed the suit against the salesman. The court found in favor of the broker, as well. The court stated that the license law statute was regulatory, and in the nature of a penal statute. Penalties for its violation involved suspension or revocation of license. Since there was no allegation of fraud or bad faith on the part of the broker or salesman, the statute did not grant any new *civil* remedies against real estate brokers or salespersons. However, where the seller refuses to consummate a sale, without cause, the broker should re-

turn the deposit money to the purchaser: *Mathis v. Yarig*, 176 A. 2d. 794 (N.J. App. 1961).

Listing and selling broker in multi-list associations

Assuming that the broker, who listed the property for sale, and the selling broker, who negotiates the sale, are both members of the same multi-list association, the controversial question often arises as to which broker should hold the earnest money deposit. Neither the seller nor buyer is a member of the organization, and, therefore, is not bound by the internal rules and by-laws of the organization. The owner has contracted with the listing broker; the buyer has dealt with the selling broker. If the listing broker is also the selling broker, no problem arises. If two brokers are involved and the deal is not consummated, or, if the selling broker absconds, a serious question is posed regarding the respective rights of seller and buyer.

The agreement of sale may provide that the earnest money deposit shall be paid by the buyer to the listing broker. This should be explained to the buyer, disclosing the name of the listing broker to him. For the protection of the selling broker, he should receive a *signed* acknowledgment to that effect from the buyer. If a check is tendered by the buyer, the selling broker should request that the listing broker be named as a payee.

Agreement subject to conditions—financing

The agreement of sale must conform to any conditions in the listing contract, in order for a broker to collect a commission. It is also true that, independent of the listing agreement, if the agreement of sale is made subject to a condition or contingency, the broker cannot collect a commission unless the condition is satisfied. In the case of *Stovall Realty & Insurance Co., Inc. v. Goff*, 159 S.E. 2d 467 (Ga. 1968), a contingency in the sales agreement rested solely upon buyer's *procurement* of loan, not his ability to procure loan, or willingness of third party to make loan. The court held that performance of the contingency rested solely upon the act of the defendants in procuring the loan and, consequently, did not relieve the contract of the deficiency as to mutuality. The broker could not recover in his action for a commission.

It is a well-known fact that most sales require mortgage financing. The process is by purchaser-application to a lending institution, a commitment by the institution, examination of title, and closing. The broker or salesperson plays an important role in obtaining a mortgage so that the sale can take place, and the commission earned. The language in the agreement of sale, prepared by the broker, in referring to the procurement of a mortgage, is all important. A clause such as, "subject to obtaining a satisfactory mortgage in the amount of \$20,000," is dangerous. A purchaser who desires to renege on the agreement can usually find that the mortgage proposed is not satisfactory, because of the interest rate, term, or monthly payments. However, in the 1976 case of *Gaynes v. Allen* 362 N.E. 2d 197 (N.H.), the Court held in an agreement of sale, "subject to the buyer obtaining available financing," that a mortgage obtainable from a Savings and Loan Association for a term of 25 years at 9³/₄% interest, and that "the stipulated rate of interest may be increased, but only after a three-month written notice to the borrower," met the clause in the agreement for "available financing." From the above, it is clear that the broker, in preparing the agreement of sale, should spell out the mortgage contingency clause with definiteness and clarity. A suggested clause in the agreement of sale would read:

This sale is contingent upon Buyer obtaining a commitment (the "Commitment") for a mortgage loan in the amount of \$_____ for a term of not less than _____ years, at an effective interest rate of not more than ____% per annum. Buyer shall obtain said Commitment by _____, 19____ ("Commitment Date"). Buyer shall make application in writing to a responsible mortgage lending institution for the Commitment within ten days from the date of Seller's acceptance hereof.

If Buyer applies for and cannot secure the Commitment, Buyer shall, on or before the Commitment Date, notify Seller in writing either that (1) this Agreement is terminated, in which event all of Buyer's Earnest Money Deposit shall be returned to him and all rights and liabilities of the parties hereto shall thereupon cease and determine, or (2) Buyer waives the Mortgage Contingency Clause, in which event this Agreement shall continue in full force and effect as if no such contingency had existed.

Broker liable upon his independent promise

Where the broker knows that the buyer must sell his present home in order to provide funds for the purchase of his dream house, the broker or salesman should be aware of the responsibilities he assumes if he guarantees to sell the buyer's present home within the time for the closing on the new home, and he fails to do so.

The broker or salesman may be well intentioned, but if he is unable to fulfill his promise, he is personally liable to the buyer for any loss which he may sustain. The same result is true where the broker promises to obtain the necessary financing to make a real estate deal, and he fails to do so.

If the deal is subject to the sale of the buyer's present home, or to obtain necessary financing, a clause should be written into the agreement of sale to that effect. The owner may refuse to sign the agreement since it contains a conditional clause, but the broker then knows that he is taking a calculated risk, if the conditional clause is omitted and the broker has committed himself to selling the buyer's present home or obtaining mortgage financing.

Postdated checks for down payment

Sometimes a broker will accept a "postdated check" (bears a date subsequent to its delivery) which is not honored upon presentation to the bank. Unless the owner has consented to the acceptance of the check, the broker has violated his fiduciary responsibility to his principal and again jeopardizes not only his commission, but his license, which means his livelihood. A broker is within his rights in accepting an ordinary check for earnest money, even though the buyer immediately stops payment on the check because it is everyday business custom to accept a check in lieu of cash; but the broker who receives a check is duty-bound to deposit it *promptly* for payment. A postdated check, which is dishonored, or a check upon which payment has been stopped, has no effect upon the validity of the agreement of sale, if the seller takes action against the buyer to enforce it. Sometimes, instead of cash, the buyer will give the broker a short-term promissory note. A broker is guilty of bad faith and jeopardizes his license when he accepts a note instead of cash without disclosing this fact to his principal. The agreement is not void because of the default upon the note.

The case of *Witherspoon v. Pusch*, 136 P. 2d 137 (Colo. 1960), was a suit by an owner for breach of written contract to purchase realty and to recover on check for down payment on which payment had been stopped. The Supreme Court held that parol testimony of buyer as to understanding with owner's *broker* that the offer to purchase was not a firm offer and that check for down payment was to be held until buyer had opportunity to investigate zoning restrictions and adaptability of the

property to intended use, was admissible to show that there was no contract, and was not an attempt to vary terms of written contract. The plaintiff relied upon signed contract, and check for \$1,500 marked "Payment Stopped." The Court said:

The check itself stands or falls upon the existence of a good and sufficient contract between the parties. In this case, Mrs. Pusch (buyer) testified that the signing of the offer and the giving of the check was a convenience which would make it unnecessary for the parties to meet again, if she found upon the investigation that everything was satisfactory as to zoning classification, adaptability of the plumbing for conversion of the building into apartments as required by the City and County of Denver.

The plaintiff contended that if these conditions were made between Mrs. Pusch and the broker, they were not binding upon her because the broker was not a party to the contract. The Court held that the broker was the agent of the owner and, therefore, there could be no recovery.

Where an agreement of sale has been signed and a check made payable to the broker, is given to the broker, as a deposit, and the buyer stops payment on the check, the owner cannot sue on the check, but the broker can. Under these circumstances, the court held, in the case of *Duncan v. Baskin*, 154 N.W. 2d 617 (Mich. 1969), that upon dishonor by the maker, and subject to any notice of dishonor or protest, the holder of a check has an immediate right of recourse against the drawer. Production of the check entitled the broker to recover, without submitting further proof of damages, subject to whatever proper defenses defendants raise.

In the case of *Staab v. Messier*, 264 A. 2d 790 (Vt. 1970), a contract of sale was executed, which recited "Deposit \$500." This deposit was in the form of a \$500 check given by prospective buyer to the broker "to be held, uncashed, by the plaintiff (broker) until Pepin (buyer) was able to ascertain whether or not he could raise the \$15,000 purchase price by the closing date set forth in the contract." It was conceded that when the buyer gave the \$500 check, he had insufficient funds in the bank to cover it. Broker lost his suit for a commission. The court quoted with approval the case of *Ellsworth Dobbs, Inc. v. Johnson*, 236 A. 2d 843 (N.J. 1967):

The principle that binds the seller to pay commission if he signs a contract of sale with the broker's customer, regardless of the customer's financial ability, puts the burden on the wrong shoulders. . . . It follows that the obligation to fulfill the monetary conditions of the purchase must be regarded as logically and sensibly resting with the broker.

Where a broker accepted a note instead of cash, as recited in the agreement of sale, the broker was unsuccessful in recovering a commission from the owner. *Slusser v. Brillhart*, 159 N.E. 2d 480 (Ohio 1958). The failure of the broker to acquaint his principal with the fact that he was holding a note, instead of cash, was fatal to a recovery. In *Mecklenborg v. Niehaus*, 85 Ohio App. 271 (1948), the court said:

An agent owes a duty to his principal to inform him of all facts relating to the subject matter of the agency that would affect the principal's interest.

The facts should have been submitted to a jury to decide.

Where a broker signs a receipt for earnest money, which contains a notation that check is to be returned if purchaser cannot get a mortgage to cover balance (price of farm \$4,200; balance \$3,780), and no mention is made of the mortgage condition in the formal agreement of sale signed by seller and buyer, the broker is held personally responsible for the return of the down payment, if the mortgage is unobtainable: *Wartman v. Schockley*, 154 Pa. Superior Ct. 196 (1943).

A broker authorized to negotiate a sale of property has implied authority to accept the initial down payment but no implied authority to accept subsequent payments made on account of the purchase price. In the case of *Gerig v. Russ*, 200 Ore. 196 (1954), a broker in Salem negotiated the sale of 103 acres of land at \$21,500 for Russ to Gerig. The earnest money receipt read:

Received of David Gerig and Ellen I. Gerig the sum of \$500.00 as earnest money on the following described property: Approximately 103 acres and building located east of Parkersville School. Purchase price, \$21,500.00. Terms $\frac{1}{2}$ down payment in cash, balance to be arranged by loan.

Between June 23, 1949 and July 22, 1949, the purchasers paid to the broker various sums totalling \$11,500.00 without the knowledge or consent of the sellers. The buyers brought suit for specific performance, tendering balance of \$9,500.00. Sellers demanded balance of \$21,000.00. The Court said:

There is nothing in the language itself, "Terms: $\frac{1}{2}$ down payment in cash, balance to be arranged by loan" implying the authority of the broker to receive such down payment. . . it was the duty of the purchasers to make the payments direct to the sellers rather than to the broker, and when they turned the money over to the broker, they did so at their own risk.

Personal check at closing

The agreement of sale usually provides that the balance of the consideration price shall be paid in cash at the settlement. The seller, usually, can refuse the personal check of the buyer at the closing. Such check may not be honored by the bank because of insufficient funds, or the buyer may die before the check clears the bank upon which it is drawn. A bank cashier's check is always acceptable, as is a certified check. Under extenuating circumstances, a personal check may be acceptable. An attorney gave his personal check, for the buyer, at a Saturday settlement, when the bank was closed and he could not get it certified. The tender of the check was proper: *Southgate, Inc. v. Ecklini*, 207 N.W. 2d 729 (Minn. 1973).

Broker's rights under signed agreement

When the broker obtains signed agreement of sale by buyer and seller, he has performed his contract of employment and, *generally*, can establish his right to a commission. Although the broker is not a party to the sales agreement or lease, his claim for a commission is clearly buttressed if he is named in the instrument as the broker who negotiated the transaction and a commission is to be paid to him by his principal.

Where the buyer causelessly defaults, the seller may forfeit the earnest money deposit and the broker is entitled to his commission. Where a seller and buyer, after execution of the agreement of sale, mutually agree to cancel the agreement, the broker is entitled to his commission upon the full consideration price. In the case of *Huber v. Gerahman*, 300 S.W. 2d 501 (Mo. 1957), the Court held that the broker was entitled to his commission where buyer and seller mutually rescinded an executed contract for the sale of a theatre; \$2,500 deposit had been paid. The sales contract provided:

Earnest deposit to be retained by Listing Agent, without interest; if sale is closed, earnest money to apply on sale commission. Forfeited earnest money shall go first toward reimbursing expenses of agent, and balance to go one-half to seller and one-half to agent.

The Court said:

In these circumstances, the contracting parties were not free to direct the return of the \$2,500 to the purchaser and ignore the contract rights of the broker in the earnest money deposit.

To avoid any question as to the broker's rights, it is advisable to provide in the listing agreement *and* in the agreement of sale, that in case any deposit money is forfeited, it will be divided equally between the seller and the broker, up to the amount of the broker's commission.

CAPACITY OF PARTIES

Not every person has *full* contractual capacity. In this category are minors, insane persons, corporations and, to a limited extent, in some states, married women. Today, there is an increasing number of states that have lowered the age of majority from 21 years to 18 years. During minority, most contracts entered into by a minor are voidable at his option. Only contracts for necessities are binding upon him. There is no hard and fast rule to define necessities. They include more than those articles required for bare subsistence. Items which are useful and suitable to his station in life are included as necessities. Certainly, maintenance, food, clothing, *lodging*, medical attention, and education in a reasonable amount, are included in the term. A voidable contract may be disaffirmed by the minor at any time during his minority or within a reasonable time after he attains his majority. Infancy is a defense personal to the infant alone. It cannot be pleaded by the other party to the contract as grounds for avoidance of his contractual liability. The appointment of an agent by an infant is generally void. In dealing with an infant owner of real estate, the other party should require the appointment of a guardian for the infant and deal with the guardian. A broker employed by an infant to sell property would be unable to collect his earned commission if the infant changed his mind and repudiated the contract of employment. It makes no difference that the sale arranged by the broker is advantageous to the infant. An infant may appear to be of full age, but this has no bearing upon his liability or freedom from liability in a contract. Even if he wrongfully misrepresents his age, the rule of law is the same, for he cannot make himself *sui juris* (of legal age) by falsifying his age. The infant could still disaffirm his contract. However, the injured party could sue the infant in a *tort* action of deceit.

An infant who elects to disaffirm his voidable contract must do so *in toto*. He cannot elect to ratify as much of the contract as will benefit him and reject that portion which operates to his disadvantage. For example, an infant who agreed to purchase a commercial property for \$10,000 by paying \$2,500 cash and giving the owner a purchase money mortgage for \$7,500 could not compel the seller to deed the property to him upon payment of the \$2,500 cash and then disaffirm his obligation to execute the \$7,500 mortgage.

In 1970, the United States Congress enacted a law permitting 18-year-old persons to *vote* in federal elections. This does not permit 18-year-old persons to enjoy full contractual capacity unless the state law emancipates them from a minor's incapacity to *contract*.¹

Insane persons

The law also protects persons mentally incompetent from their imprudent contracts. Mentally incompetent persons include insane persons and drunkards. To af-

¹ In case of *Riley v. Stoves*, 526 P. 2d 747 (Ariz. 1974), a restriction of occupancy, in a mobile home subdivision, to persons 21 years or older, upheld.

fect the contractual ability, the degree of mental derangement must be such as to render the person incapable of reasoning from cause to effect and thus understanding the effects of his acts. A person, mentally incompetent, is nevertheless liable for necessities furnished himself, his wife, or children. Other contracts, if yet to be performed (executory), are voidable by him. The weight of authority is to the effect that where the contract has been executed so that the insane person has had the benefit and the parties cannot be restored to their former position, unaccompanied by any proof that the other knew or ought to have known of the insanity, the contract will not be voided. If the insane party has received no benefit, he may void the contract and recover what he has paid notwithstanding the other party's good faith. To be on the safe side, a guardian or committee for the estate of the incompetent should be appointed by the court and the sale of real estate made under the direction of said court. The test of whether a guardian should be appointed for the estate of a person is the degree of his mental unsoundness; if he is incapable of conducting the ordinary affairs of life so that to leave property in his possession and control would render him liable to become the victim of his own folly or designing persons, a guardian should be appointed.

Drunkards

An habitual drunkard may be regarded as an insane person and his capacity to contract is likewise limited. When a man loses his mind, he is entitled to legal protection whether such loss is occasioned by his own imprudence or otherwise. This is true even though the intoxication is voluntary and not procured by the intervention of another party.

Married women

The contractual powers of a married woman are based upon statute. Today a married woman is almost completely emancipated in her capacity to contract. She may generally transact business in the same manner as a single woman (a *feme sole trader*). In states where she cannot sell her own real estate without the joinder of her husband, he should join in the execution of an agreement of sale. Even in these states, if a woman, before marriage, enters into an agreement to sell her real estate and marries before the deal is consummated and the deed delivered, the courts will honor her agreement of sale and compel her husband to join in the deed: *Pepper v. Chatel* (D.C. No. 3056 1962).

Corporations

The contractual powers of most corporations are defined and limited by their charters and by the constitution and laws of the states where they are formed. They have those powers expressly stated in their charters and such implied powers as may be necessary and incidental to carry out those expressed powers. Where a corporation exceeds its powers, the act is *ultra vires* and unenforceable. An agreement for the sale of real estate by a corporation should be executed in pursuance of a resolution by the board of directors authorizing and directing the particular conveyance. When the agreement is made under a general resolution authorizing the officers to execute deeds for any property which they may sell, it is doubtful whether such a sale is valid since the price and terms are left to the discretion of the officers. Reference here is made to business and manufacturing corporations. Where the corporation is formed for the express purpose of dealing in real estate, requisite au-

thority may be conferred upon its officers by general resolution to execute proper agreements and deeds as the occasions arise.

Aliens

In general, foreigners, whether citizens of another state or another nation; have full contractual authority. However, under the Federal law prohibiting trading with an enemy, an affidavit by the parties to a real estate deal may be necessary stating that they are not enemy aliens.

REALITY OF CONSENT

Mistake

A contract must be free from mistake, misrepresentation, fraud, duress, and undue influence. In other words, the consent to the contract must be *real*. To avoid a contract on the ground of mistake, the mistake must be mutual and substantial; that is, it must go to the heart of the agreement. Thus, where parties use ambiguous language and each has in mind an entirely different subject matter as the basis of the agreement, there is no contract. Where Ash owned considerable real estate, some of which was located on Jackson Street in Pittsburgh while another parcel was located on Jacksonia Street in the same city, an agreement was prepared for a parcel of real estate on Jackson Street. Due to the similarity in name, the buyer thought he was purchasing and intended to buy the tract on Jacksonia Street. The contract could be set aside on the grounds of mistake.

Where the purchaser's attorney prepared the agreement of sale, and purchaser had either actual or imputed knowledge of agreement of sale, a misdescription of land is not grounds for rescission of agreement. Once buyer assumes burden of examination, he cannot claim he was deceived to his injury, where such examination discloses correct information: *Ryan v. Brady*, 366 A. 2d 745 (Md. App. 1976).

In the case of *Roy S. Ludlow Inv. Co. v. Taggart*, 509 P. 2d 818 (Utah 1973), a purchaser was not permitted to take advantage of a typographical mistake in an agreement of sale. Lot 22 was not included in a group of about 30 lots, which Taggart agreed to sell. However, Lot 22 was included, inadvertently, in the agreement of sale. Ludlow knew that Taggart wasn't the owner of Lot 22 because he had attempted to buy it from the *real* owner. Accordingly, no damages were allowed.

Misrepresentation and fraud

Misrepresentation and fraud are often confused. Misrepresentation is an innocent misstatement of a material fact, without intent to deceive, but which induces the contract. If Jones should sell Smith certain building lots and represent that the lots were on high ground and it later developed that they were not above tide level, Jones could not hold Smith to the contract even though he were honest in his representation. However, if the party to whom the misrepresentation was made did not rely upon it and made his own independent examination, he could not claim that the misrepresentation induced his contract. Misrepresentation must be as to fact and not a mere expression of opinion. If a broker represents to a customer that certain real estate *cost* \$10,000 to build and it only *cost* \$7,000, there is fraudulent misrepresentation present. Where the broker states, instead, that the property is *worth* \$10,000, that is mere expression of an opinion and does not constitute misrepresentation.

Negligent misrepresentation by a seller, which causes financial loss to a buyer, can be the basis for an action for damages: *Wilson v. Caine*, 366 A. 2d 474 (N.H. 1976).

If the following representations were untrue, they would constitute grounds for rescission of the agreement of sale: that heating plant, plumbing, and electric wiring were in good condition; that an adjoining dilapidated house has been condemned by the city and would shortly be torn down; that there was sufficient land to sell a 60-foot lot off the property, for which lot an offer of \$2,000 had already been made; that the cellar was dry and in good condition; and that the roof was in good repair. These representations are such that the truth cannot be readily determined from an inspection of the premises by one not skilled in the knowledge of home construction and plumbing. It has been held that plumbing, electric wiring, and heating are not generally ascertainable on viewing. The same is true of a roof. A sale is not dependent upon the fortuitous circumstance that a purchaser be available when rain or snow is falling so that he can inspect the roof and determine whether it is watertight and that the cellar is dry. An owner or broker must be circumspect in regard to the statements he makes.²

In the case of *Colby v. Granite State Realty, Inc.*, 366 A. 2d 482 (N.H. 1976), during the negotiations, the prospects noted that the septic tank was overflowing. The owner's real estate agent represented that the defective septic tank would be repaired prior to the sale and that the well was in good condition. The prospects then executed an agreement of sale which contained a standard provision merging all prior representations and oral statements. The seller stated, at the closing, that the septic tank had been repaired and that the well was in operating condition, which statements were untrue. The court held that the purchaser, generally, is justified in relying on material statement of fact concerning matters peculiarly within the seller's own knowledge. The purchaser was granted relief.

Whereas misrepresentation may be set up as grounds for the avoidance of a contract, it does not lay any basis for an action for damages, but only for actual incurred expenses. Fraud is a misstatement of a material fact made with intent to deceive or made with reckless disregard of the truth, which actually does deceive. It may also arise where a party conceals a material fact, disclosure of which is a duty.³ Fraud is a tort as well as a ground for avoiding a contract and will sustain an action for damages. Unless the seller does something to conceal a defect or throw him off the inquiry, the buyer has only himself to blame if the purchase turns out less valuable than he anticipated. An owner, in selling a vacant lot to a person who desires to purchase it for the erection of a home, is not bound to disclose that the lot is "filled in" land unless the buyer makes inquiry and the owner, by word or deed, does something to disarm his suspicions and steer him away from the inquiry. By the same token, a buyer in negotiating the purchase of farm land, is not bound to disclose the presence of underlying coal land which is motivating the purchase in question. The parties deal "at arm's length." It is wise to permit a prospective purchaser to make a thorough examination of the premises under consideration and then to insert a clause in the agreement of sale to the effect that the purchase is being made as a result of the buyer's inspection; or that he is buying the property "as is." As a general rule, the buyer takes the property subject to *patent* defects, *i.e.* those which are ascertainable upon view, or a reasonable inspection of the property; the buyer can rescind the contract, where he later discovers *latent* (hidden or

² *Lake v. Thompson*, 366 Pa. 352 (1950).

³ *Karan v. Bob Post, Inc.*, 521 P. 2d 1276 (Colo. 1974).

concealed) defects which were not readily ascertainable upon view, such as a defective septic tank, plumbing or electrical lines.

In the case of *Dillahunt v. Keystone Savings Ass'n.*, 303 N.E. 2d 750 (Ohio 1973), the court held that the principle of caveat emptor applies to sale of real estate relative to conditions open to observations.

The rule of caveat emptor

The ancient rule of caveat emptor (let the purchaser beware) is fast being eroded, as court authority takes a broader view of a new social philosophy oriented towards consumer protection. Under the doctrine of caveat emptor, the buyer was supposed to examine the property he was purchasing to satisfy himself that it was fit, suitable and satisfactory for his purposes. Not so, today.

The reason why the rule of caveat emptor has been so much eroded in modern times has been well stated in the case of *Mayo v. Wilbrite*, 232 S.E. 2d 141 (Ga. App. 1976), as follows:

The rule of caveat emptor. . . is a statement of the mores of medieval times through nineteenth century England (and America), and apparently worked well in agricultural societies, as evidenced by its centuries of acceptance. However, the sale of farm acreage (with) simple residence — the type of transaction to which caveat emptor originally addressed itself — is very different from the sale of a modern home with complex plumbing, heating, air conditioning, and electrical systems, which is possibly built on ground considered unsuitable for construction until recent years.

The case involved a septic tank, which overflowed during rainy weather and which the seller had never been able to repair. The Court pointed out that the purchaser agreed to buy a house which appeared to be in normal working order. The seller "had knowledge of the condition and surely knew that information concerning the defective condition would have significantly affected the buyer's decision." This, the Court termed "passive concealment."

In the case of *Beavers v. Lamplighters Realty, Inc.*, 556 P. 2d 1328 (Okla. 1976), the Court makes pertinent reference to an earlier case, *Prescott v. Brown*, 120 P. 991 (Okla. 1911),

which (opinion) featured a remarkably lucid no-nonsense (stand), executing a powerful assault on one of the less admirable hand-me-downs of our Anglo-Saxon common law heritage of caveat emptor, a doctrine that exalted deceit, condemns fair dealing and scorns the credulous.

In the case at issue, a prospect made an offer of \$34,500, which was rejected. Still wanting the house, he called the broker. He was told: "If you are going to do anything, you had better do it pretty quick, because I've got a buyer for it at \$37,000." The prospect offered \$37,250, which was accepted. It developed that there was no offer at \$37,000. The prospect sued to rescind the contract and was successful. The Court said:

It is as much an actionable fraud wilfully to deceive a credulous person with an improbable falsehood as it is to deceive a cautious and sagacious person with a plausible one. The law draws no line between falsehoods.

The case of *Rothenberg v. Oleno*, 262 A. 2d 461 (Vt. 1970), involved a new house under construction. A year after taking possession the buyers discovered that structural defects had appeared in the foundation. The walls were cracking and bulging; . . . nor was the foundation properly waterproofed which aggravated the damage to the foundation walls. The floors were uneven and hazardous and not finished

in a workmanlike manner. . . The defendant relied upon the ancient doctrine of caveat emptor. The court said:

The crucial question here is whether the doctrine of caveat emptor applies to the sale of a new house by a builder-vendor and it must be resolved on the basis of the particular facts presented in the case.

The court cited an English case, *Miller v. Cannon Hill Estate Ltd.*, 2 K.B. 113 (1931) where the defendant told the plaintiff that he would use the best materials and perform the work in the best workmanlike manner, but this was not written in the agreement. Some time after the plaintiff took possession, excessive dampness penetrated the house, due to faulty construction. The court decided in favor of the plaintiff, holding that where a purchaser buys a dwelling under construction, there is an implied warranty that upon completion, the dwelling will be fit for the purpose intended and habitable. The Vermont court also cited a South Carolina case, *Rogers v. Scyphers*, 161 S.E. 2d 81 (1968), where the court said:

While most courts still adhere to the proposition that in the usual, normal sale of land and old buildings, the ancient doctrine of caveat emptor, with respect to a vendor, who is also the builder of a new structure, the decided trend of modern decisions is to make a distinction. Where the vendor is also the builder he is today, by the weight of modern authority, held liable for damages and injuries occurring after the surrender of title and possession, based on the theory of an implied warranty or an imminently dangerous condition caused by negligence in construction.

Other jurisdictions have adopted the implied warranty theory in *Vanderschrier v. Aaron*, 140 N.E. 2d 819 (Ohio 1957); *Glisan v. Smolenske*, 387 P. 2d 260 (Colo. 1943); *Jones v. Gatewood*, 381 P. 2d 158 (Okla. 1963); *Weck v. A.M. Sunrise Construction Co.*, 181 N.E. 2d 728 (Ill. 1966); *Staff v. Lido Dune, Inc.*, 262 NYS 2d 544 (1965); *Bethlahmy v. Bechtel*, 415 P. 2d 698 (Idaho 1966); *Humber v. Morton*, 426 S.W. 2d 554 (Tex. 1968). The Vermont court said:

The law should be based upon current concepts of what is right and just and the judiciary should be alert to the neverending need for keeping its common law principles abreast with the times. Ancient distinctions which make no sense in today's society and tend to discredit the law should be readily rejected as they appear to have been step by step in the cases cited . . . we find no rational doctrinal basis for differentiating between a sale of a newly constructed house by the builder-vendor and the sale of an automobile or any other manufactured product.

A Colorado Appellate Court held that the implied warranty doctrine does not apply when the house is bought from a previous owner, who is not the builder. In the case before the court, the defendants bought the house new and lived in it for 15 years. The house was represented to the buyers in July 1969 that it was in "good condition." In September of 1969, when the buyers attempted to operate the furnace, they found it was defective and they had to install a new furnace at a cost of \$525. The appellate court reversed the lower court and found in favor of the seller: *Gallegos v. Graff*, 508 P. 2d 798 (Colo. App. 1973).

It may be said that implied warranty is the antithesis to caveat emptor.

Under the wave of consumerism, it is the seller who must beware: *Pollard v. Saxe and Yolles Dev. Co.*, 525 P. 2d 88 (Cal. 1974).

In a Louisiana case, the Supreme Court held that the buyer of a used home could recover cost of repairs due to a *hidden* defect, even though the seller was unaware of the defect. There is no obligation on the part of a purchaser to inspect a property

with *expertise*, particularly in regard to termite damage: *Lorio v. Kaizer*, 277 So. 2d 633 (La. 1973).

In the case of *Pywell v. Haldave*, D. C. Court of Appeals (1962), the plaintiffs purchased a house from owners, through a broker, who represented the house to be in good or sound condition. Later, the house was found to be damaged by termites and the buyers brought suit for damages. The appellate court held the broker's representation that the house was in good or sound condition was merely the expression of an opinion and not a representation of material fact. The court said:

Such a description of the premises, quite common in the parlance of sales, was so vague and general as to be incapable of particular application. The words were but indefinite generalities so plain that they cannot be supposed to have deceived any rational person.

In the sale of farm land or a ranch, a difference is to be observed whether the sale is "in gross or by acre." The difference is defined in 55 Am. Jur. Vendor and Purchaser, Sec. 127:

A contract of sale by the acre is one wherein a specified quantity is material. Under such a contract the purchaser does not take the risk of any deficiency and the vendor does not take the risk of any excess. A contract of sale by the tract or in gross is one wherein boundaries are specified, but quantity is not specified or, if specified, the existence of the exact quantity is not material; each party takes the risk of the actual quantity varying to some extent from what he expects it to be. *Carrel v. Lux*, 101 Ariz. 430 (1966).

The case of *Witmer v. Bloom*, 288 A. 2d 323 (Md. App. 1972) involved the question of whether the contract is for the sale of land in gross, or a sale by the acre. The agreement read "consisting of 26.6 acres more or less." The contract also provided "subject to survey of said property, to be made by buyer within 30 days. . ." The survey measurement showed slightly less than 21 acres. The court said:

A sale in gross, sometimes called a "contract of hazard," where specific designated parcels of ground are sold as whole and there is no warranty, express or implied, as to quantity. (2 Words and Phrases, Third Series page 446.) In determining whether a sale is by the acre or in gross as in other contracts, the intention of the parties is controlling and must be given effect.

In this case, the court reversed the lower court and held the sale was by the acre and the purchaser could rescind the deal.

A purchaser of land in gross (more or less) will not be granted relief, when the purchaser can look at the boundaries of the property, bases his decision to buy upon that view, and it later develops that the measurements are not what that purchaser thought. He is bound to take the property, because he received substantially what he thought he was buying: *Liddycoat v. Ulbricht*, 556 P. 2d 99 (Or. 1976).

In the case of *Peoples Furniture and Appliance Co. v. Healy*, 113 N.W. 2d 802 (Mich. 1962), a buyer sued for the return of a \$5,000 deposit, when the buyer elected not to complete the deal, upon discovering there was a possibility of flooding. Plaintiff was unable to obtain flood insurance. The Supreme Court held that representation of agent with regard to slight possibility of flooding was material. The Court held that "the fact that plaintiff might have ascertained the situation from others is no defense if plaintiff had a right to rely on defendant's representation."

In the case of *Goggans v. Winkley et al.*, 465 P. 2d 326 (Mont. 1970), the purchasers sued the sellers for damages from alleged false representation by vendors in inducing purchase of land. The Supreme Court held that a provision in contract for deed that expense of surveying premises should be borne by purchasers did not preclude purchasers from attempting to prove that certain representations were

made by real estate agent relative to a previous survey, and that these representations were properly relied upon and were incorrect.

Where a broker made certain misrepresentations concerning the gross income of a motel and the vendors made a correct disclosure prior to the time the transaction was closed, the buyers were not justified in relying on the previous misinformation furnished by the broker. Under such circumstances the broker cannot be held liable. If there had not been accurate disclosure before signing, the broker and vendors would have been jointly and severally liable: *Viebahn v. Gudim et al.*, 273 Minn. 504 (1966).

The case of *Isaacs v. Cox*, 431 S.W. 2d 494 (Ky. 1968) involved an action by purchasers for rescission and damages for alleged fraud and misrepresentation in obtaining a real estate contract. The complaint alleged that there were misrepresentations as to the water system, construction of the house and that the defendants represented that certain additional work and materials would be provided after the date of the deed and possession by the plaintiffs. It was also charged that this had not been done. The general rule of law is well settled that a principal is responsible for his agent's fraud in effecting a sale if made within the actual and apparent scope of his authority. The court held that misrepresentations, if any, made by the agent, as to water quality or supply, were material. The sellers contended that any statements made by them or their agent were not admissible in evidence, since the contract provides:

We have read the entire contents of this contract and acknowledge receipt of same. We are not relying on verbal statements not contained herein. We further certify that we have examined the property described herein-above; that we are thoroughly acquainted with its condition and accept it as such.

The court said:

Those cases (cited by defendants) held that the written terms of a contract of sale were controlling and that oral representations of a contradictory nature could not be introduced for the purpose of varying the contract. The buyers offer the testimony, not for the purpose of varying the contract, but in order to prove misrepresentations which induced them to enter into it. Such testimony is admissible even though the contract contained the above quoted provision.

The court remanded the case to the lower court for further hearing.

The parol evidence rule, upon which the defendants relied, provides that no oral testimony can be introduced to vary, contradict, add to or subtract from, the terms of a written contract, or change its legal import, except for fraud, accident or mistake. In spite of the "exoneration" clause in most agreements of sale that the buyer is not relying upon any verbal statements and it is being purchased as a result of personal inspection and examination, fraud can be introduced as grounds for over-coming and setting aside the clause in question: *Becker v. Lagerquist Bros. Inc.*, 348 P. 2d 423 (Wash. 1960).

Fraud may also consist of concealing a material defect where there is duty to disclose. Silence as to a condition which the purchaser is not likely to discover (house built in a gully, upon filled-in ground), may constitute fraud: *Lawson v. Citizens and So. National Bank*, 193 S.E. 2d 124 (S.C. 1972); *Webb v. Culver*, 509 P. 2d 1173 (Ore. 1973).

While it is the general rule that the agreement of sale is merged in the deed, this principle, however, will not prevent reformation upon showing of mutual mistake of fact, misrepresentation, or fraud: *Bicknell v. Barnes*, 501 S.W. 2d 761 (Ariz. 1973).

Undue influence

Undue influence is a mixture of fraud and force. Sometimes a person will enter into a contract in order to get rid of a persistent salesman. The mere fact that consent was obtained through nagging and importunity is insufficient to avoid the consequences of a contract. However, where the mind is enfeebled by old age, disease, or great distress, undue influence may be readily proved. Force is opposed to freedom. Free consent is the essence of every agreement. The question to be determined is whether the party was deprived of the exercise of his free will power.

In order to establish undue influence as basis for setting aside deed from parents to son, the law requires more than mere opportunity to exert undue influence or suspicions on part of those who feel aggrieved: *Hotchkiss v. Werth*, 483 P. 2d 1053 (Kan. 1971); *Gallegos v. Garcia*, 480 P. 2d 1002 (Ariz. 1971); *Hensley v. Stevens*, 481 P. 2d 694 (Mont. 1971).

Capacity to contract

In *Star Realty, Inc. v. Bower*, 169 N.W. 2d 194 (Mich. 1969), involving an action for specific performance brought by a buyer, the court denied specific performance. The court stated the well-settled test of mental capacity to contract, "is whether the person in question possesses sufficient mind to understand in a reasonable manner, the nature and effect of the act in which he is engaged. However, to avoid a contract it must appear not only that the person was of unsound mind or insane when it was made, but that the unsoundness or insanity was of such a character that he had no reasonable perception of the nature or terms of the contract."

In the case of *Watson v. Alford*, 503 S.W. 2d 897 (Ark. 1974), a vendor, 100 years of age and in feeble health, sold for \$200 a property which was valued at \$6,750. The court held that the vendor's physical condition and the gross inadequacy of price were sufficient to require cancellation of conveyance.

Duress

Duress may be defined as that degree of constraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity to overcome the mind of a person of ordinary firmness. Mere threat of imprisonment or of a law suit is insufficient.

Legality of object

The object of the contract must be legal. If the purpose contravenes the Constitution, a statute, or a Federal treaty, the contract is void. Likewise a contract which tends to interfere with the public government or is injurious to the public at large, such as the perpetration of a nuisance, is unenforceable.

Closing costs

A broker should furnish the buyer and seller a statement of *estimated* costs due at the closing. The statement to the buyer should include title insurance fees, mortgagee's charges (if applicable) cost of appraisal, credit report, origination and placement fees, mortgage service charge, survey, escrow fund (taxes and insurance), notary fees, pro-rata expense for unexpired insurance and taxes, state or local deed transfer tax, and recording fee for deed and mortgage. A statement of the estimated charges to be paid by the seller at the closing, should also be furnished to the seller before the agreements are signed. These would include cost of preparation of

Deed, real estate commission, points if the buyer is obtaining a mortgage, if applicable, and Deed transfer stamps.

If the broker fails to acquaint the parties with the charges to be paid by the respective parties *before* the agreements are signed, difficulties may develop at the closing. The buyer may then find that he does not have sufficient funds available to close the deal and the seller may become disenchanted with the broker, when he finds for the first time that he is expected to pay points for the buyer's mortgage.

"Dummy" purchaser

Where the seller is accepting a mortgage in part payment of the purchase price, he should insist upon the real buyer signing the agreement. If the agreement is signed by a "straw" man or "dummy," the purchase money mortgage and accompanying note or bond add no value to the property security. In case of foreclosure at a future date, the seller would be unable to recoup any loss sustained between the sale price of the property at foreclosure and his debt.

Conditions in agreement

A written memorandum, in order to be effective as a sales agreement, must disclose all essential elements of the sale, and cannot rest partly in writing and partly in parol; e.g., time of payment, manner of payment, whether cash or credit.

Where the broker prepares the agreement of sale, he should ascertain from the owner's deed whether there are any conditions in the title which might affect the transferability of the property. Reference is made to oil, gas, coal and mining rights, rights of way, building restrictions, driveways, and the like. The agreement should be made subject to grants, rights, easements, covenants, and restrictions contained in prior deeds of record. If there is some question of encroachment or overlapping, the agreement description should be made subject to actual conditions shown by survey. These items, unless excepted, constitute encumbrances within the meaning of the term. Since the seller covenants that he will convey clear title, the buyer could refuse to consummate the deal and look to the seller for damages, unless the encumbrance in question was specifically excepted. A *definite* date for closing must be inserted in the agreement. If no date is specified for closing, the courts may well consider that the parties *intended* a reasonable time and would be governed accordingly.

A broker should not change or alter an agreement of sale after it has been executed, unless both parties agree *in writing*. The alterations may appear harmless but turn out differently.

An elderly seller agreed to sell his farm for \$19,000—\$1,000 earnest money deposit, \$1,500 when the deal was closed, and the balance of \$16,500 in a purchase money mortgage at the rate of \$100 per month. The broker prepared the agreement of sale accordingly. The buyer inserted three small words "not less than" in front of "\$100 per month." The seller refused to deal, because he wanted a monthly income in his old age and the buyer under the "not less than" clause could pay the entire mortgage or a substantial part of it at any time. The deal fell through and the broker lost a commission.

Exoneration clause or exculpatory clause

A great many agreements of sale, throughout the country, contain a clause similar to the following:

This agreement constitutes the entire agreement between the parties. There are no other conditions, terms or covenants agreed upon except those herein set forth, and the purchasers have not entered into this agreement in reliance upon any representations or statements not specifically set forth in this agreement.

The clause, however, cannot exonerate the broker or his principal for any fraud or misrepresentation made by the broker, which *induced* the purchaser to enter into the agreement: *Ritz v. Mymor Houses, Inc.*, 213 N.W. 2d 470 (Iowa 1973).

The same defenses of fraud or misrepresentation could be asserted by a buyer as to hidden defects or damages, where the buyer purchases a dwelling "as is." The clause reads, more fully, as follows:

It is understood by the parties hereto that the property herein sold has been inspected by the purchaser, or his or their agent, and the same is being purchased as a result of such inspection, in its present condition.⁴

Date — essence of the agreement; action for specific performance

Many purchasers are concerned that they may not be able to close a transaction upon the date specified in the agreement; for example, the mortgage money may not be available by the closing date, the buyers of the purchaser's home may not be ready to close on the purchaser's home, the moving may not be available until a week after the closing date. Similarly, the sellers may not be ready to close on the date specified, because the house they are having built will not be ready.

If either party wants to insist that the closing be held absolutely upon the date specified, the date must be made a vital and material part of the agreement; thus, "... on Feb. 1, 1978, which date and time is of the *essence* of this agreement." The time of essence clause may be waived by an extension agreement, as well as by conduct of the parties: *Ricchio v. Oberst*, 251 N.W. 2d 781 (Wis. 1977). If the date for closing is not made the essence of the agreement, both parties have a *reasonable* time after the date specified within which to close. There is no hard and fast rule to determine what constitutes a reasonable time. It depends upon a variety of circumstances—the activity of the real estate market, type of property involved, time of year, and the like. Thirty or sixty days in most cases would constitute a reasonable time.

Some printed real estate agreements of sale contain a clause reading:

The said time for settlement and all other times referred to for the performance of any of the obligations of this agreement are hereby agreed to be of the essence of this agreement.

Should the vendor be indulgent and waive the strict time obligation in one respect, he may well be held to a waiver of the other time obligations by the buyer.

Any oral extension of time negotiated by vendor of "time is of the essence" clause in an agreement of sale is binding and need not be in writing under statute of frauds: *Kimm v. Anderson*, 313 A. 2d 46 (Me. 1974). Waiver may be shown by parol evidence, by way of circumstances or course of dealing: *Smith v. Hues*, 540 S.W. 2d 485 (Texas App. 1976).

If no closing date is included, the agreement would not be void, but the parties would have a reasonable period after the agreements were signed in which to close.

The case of *Robinson v. Abren*, 345 So. 2d 404 (Fla. App. 1977) was an action for specific performance brought by the purchaser. The closing date, per agreement of sale, was December 15, 1971, and *time was of the essence*. The cash payment on the contract was not received by the seller by December 15, 1971. It was mailed by the

⁴ *Colby v. Granite State Realty, Inc., et al.*, 366 A. 2d 482 (N.H. 1976), held liable for *oral* misrepresentation in re faulty septic tank and well.

purchasers on December 16, 1971 and it was mailed *to the broker*, and not to the seller. The Court held that the buyers failed to show that the broker had express, implied or apparent authority to accept payment after the closing date. Specific performance of the agreement was denied.⁵

Tender and demand

Unless the buyer expressly waives tender of deed by the seller, in the agreement of sale, the latter, upon the buyer's failure to consummate the deal, should make tender of an executed deed and demand for the balance of the purchase price. This can be done by the broker, for the seller, or by the attorney for the seller. This is especially important if tender of deed is not waived by the buyer in the agreement. This is necessary in order to establish that the seller is free from default and that he is ready and willing to perform. Tender may be excused where the buyer has expressed unequivocally an intention of renouncing the agreement. This is known as anticipatory repudiation. A buyer ready, willing and able to perform is held equivalent to a tender: *Ricchio v. Oberst*, 251 N.W. 2d 781 (Wis. 1977).

A vendor is entitled to retain an earnest money deposit upon purchaser's anticipatory repudiation of agreement of sale, despite absence in agreement of clause authorizing such retention: *Pruett v. LaSalceda*, 359 N.E. 2d 776 (Ill. 1977).

In the case of *Ward v. Doucette*, 301 N.E. 2d 256 (Mass. 1973), the court held that a letter from the buyer, through his attorney, to the seller that he was prepared to pay the balance due and requested that a deed be executed for delivery to him, did not constitute a legal tender. Accordingly, the defendant seller was not in default.

It is dangerous for a broker to re-sell the property for the owner, where there is a signed agreement outstanding, unless repudiation by the first buyer can be proven, or proper tender and demand can be shown to have been made by the vendor. Otherwise, the first buyer may appear and state that he is ready to perform. Even if he cannot prove a valid case, the seller may be put to harassment and expense.

It is imprudent to permit a buyer to take possession of premises under an agreement of sale which has not yet been consummated. In the absence of a lease, the buyer would be under no obligation to pay rent while in possession, if the deal were not consummated. When a buyer is allowed possession before the deal is closed, he should be required to execute a short-term lease. The rental might be increased substantially from month to month. The same precaution should be taken when the seller is permitted to remain in possession after the deal is closed. A broker should keep in mind the distinction between a specific date for closing and "at the time of the delivery of deed." Thus if taxes are to be apportioned as of the date specified — e.g., June 1, 1974 — the buyer has the obligation for taxes from that date on even though the transaction is not closed until August 15, 1974, whereas, if taxes are apportioned as of the date of delivery of deed, the buyer's responsibility for taxes would not accrue until August 15, 1974.

Acknowledgment

It is not necessary to have the agreement of sale acknowledged. From the standpoint of the buyer, it is a good precaution to have the agreement acknowledged by the seller, particularly if a considerable time is to elapse before the deal is closed. Acknowledgment permits the agreement to be recorded and this constitutes a

⁵ *Harris v. Potts, et al.*, 545 S.W. 2d 126 (Tex. 1976). Decree for specific performance of an oral agreement of sale denied.

cloud upon the title until the agreement is merged into a deed or stricken from the record by some voluntary action upon the part of the buyer or by order of court.

Equitable conversion

With the signing of the agreement of sale, equitable (beneficial) title to the property vests in the vendee, and legal title continues in the vendor, until transferred by deed through the doctrine of equitable conversion. This means that any increase in the value of the property being sold, between the date of the sales agreement and the delivery of deed, inures to the benefit of the buyer.

Where, after an agreement of sale is executed, and before the deal is closed, a building on the land is destroyed in whole, or in part, by fire, or other casualty, court decisions are not in accord as to which party to the agreement must bear the loss. The weight of authority holds that an accidental loss falls on the purchaser, and he must complete the deal according to the terms of the agreement: *Good v. Jarard*, 76 S.E. 698 (S.C.); *Oakes v. Wingfield*, 95 Ga. App. 871 (1957).

In the case of *Insurance Co. of N.A. v. Erickson*, 50 Fla. 419 (1905), the Court stated:

It has long been the law of Florida that under a binding executory contract for the sale of land, where the purchaser is regarded as equitable owner, the purchaser must ordinarily bear any loss that occurs. . . :

Sanford v. Breidenbach, 173 N.E. 2d 702 (Ohio App. 1960); *Skendzell v. Marshall*, 301 N.E. 2d 641 (Ind. 1973).

The minority view, followed in several New England states, holds that when the building is destroyed by fire, there is failure of consideration under the law of contracts, and the loss falls upon the vendor: *Thompson v. Gould*, 20 Pick. 134 (Mass. 1838); *Libman v. Levenson*, 128 N.E. 13 (Mass. 1920); *Durham v. McCready*, 151 A. 544 (Me. 1930).

Where the property is insured by the vendor, the vendee is entitled to the benefit of the insurance as a set-off against the purchase price. In the case of *Dubin Paper Co. v. Insurance Co. of North America*, 361 Pa. 68 (1948), the court held that where the insured (owner) enters into an agreement of sale of the property covered by the insurance policy, and a fire loss occurs before the deal is consummated, and the insured receives the proceeds of the policy, he holds these as trustee for the buyer. "Conscience of equity" so requires, and is given expression by creating a constructive trust for the benefit of the buyer: *Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380.

A number of states, as in California and New York, have adopted the Uniform Vendor and Purchase Risk Act. The Act, in essence, places assumption of risk of loss upon the vendor, unless the buyer is in possession. Many agreements of sale in use include a clause placing the risk of loss upon the seller, unless the buyer is in possession of the premises. It is a wise precaution for the purchaser to obtain insurance upon the property, *immediately*, upon the signing of the agreements, protecting him against loss by fire, casualty, or accident.

Equitable title—change in zoning

Under the equitable title doctrine, any change in the zoning ordinances of the municipality, affecting the property, are at the risk of the *buyer*. In the case of *Didonate v. Reliance Standard Life Ins. Co.*, 433 Pa. 219 (1969), "the crucial inquiry is which of the litigants (buyer or seller) bore the risk of loss attending the zoning change between the Agreement of Sale and the settlement." The court said:

There appears to be no cogent argument for treating losses resulting from zoning changes occurring between the execution of the Agreement of Sale and settlement differently from casualty and other kinds of loss between those periods. The parties are always free to mold rights and responsibilities inter se (among themselves) in whatever fashion they desire. But when they are quiet, the law will speak in a voice of finality to set their dispute to rest.

However, even if there is an agreement, subject to a zoning contingency, the buyer can elect to waive the contingency and accept the property "as is," without the desired change in zoning. An agreement of sale was made subject to the buyer's obtaining a variance of a prohibited use under the zoning ordinance by a certain date. He was unable to obtain the variance. The seller sued him. The buyer was unsuccessful in the lower court, but took an appeal. Since this would have taken time beyond the specified date, the buyer decided to take the risk involved, waived the contingency, and elected to take the property without the variance. The seller refused and returned the deposit. The Alabama Supreme Court compelled specific performance without the subject contingency: *La Grave v. Jones*, 336 So. 2d 1330 (1976).

In the case of *White Realty & Ins. Co. v. Moreland*, 259 A. 2d 461 (Pa. 1969), involving a suit for commission, the sales agreement contained the following controversial clause:

"Sellers warrant that the said location is zoned commercial at the time of settlement." The contract also provided that the seller was obligated to the broker for a commission "at or prior to the time of settlement, hereunder, a sales commission" of \$2,670. The court held that the word "warrant" was not a promise by the sellers to secure a change in the zoning, but that it was an agreement "that the vendee's duties would be conditional on the future existence of the fact that the property was zoned as commercial property."

The court stated further:

This interpretation is supported by the further principle *that contracts which tend to interfere with the administration of government are unenforceable*. (citing cases) *To contract for the accomplishment of something that is within the legislative discretion of a municipal body, is to be discouraged as against public policy*. (emphasis supplied)

No recovery by the broker. See also *Wright v. City of Littleton*, 483 P. 2d 953 (Colo. 1971); *Craig v. Presbyterian Church*, 62 Mich. App. 617 (1975); *Gignilliat v. Borg*, 205 S.E. 2d 479 (Ga. App. 1974).

In short, the agreement of sale should be made subject to zoning, permitting the use intended, upon delivery of deed. If a zoning change is required, the agreement should spell out whether the deal is contingent upon such change, and which party is to seek the change.

Agreement made subject to financing

If the agreement of sale is subject to mortgage financing, it is important that reference be spelled out in definite terms—amount and type of mortgage, interest rate, commitment date for approval of mortgage; amount of appraisal required if FHA financing.

Should the mortgage be an FHA insured mortgage, the agreement should expressly provide that, notwithstanding any other provisions of the contract,

the Buyer shall not be obligated to complete the purchase of the within described property or to incur any penalty by forfeiture of earnest money deposits, or otherwise, unless the Seller, or his agent, has delivered to Buyer a written statement issued by the Federal Housing Authority

setting forth the appraised value of the property for mortgage purposes of not less than the amount specified above (Purchase price), excluding closing costs, which statement Seller agrees to deliver to Buyer promptly, after such appraised value statement is available to Seller. Buyer may, however, have the option, within five days from the written notification to him of the FHA appraisal, to proceed with the consummation of the contract according to its terms.

A Pennsylvania appellate court has held that where an agreement for sale of a \$24,000 dwelling is made subject to the purchaser obtaining a mortgage in the sum of \$16,000, the purchaser had a right to expect a loan with a 20-year maturity and, upon his failure to obtain such a loan, he was entitled to a refund of his \$2,000 deposit: *Tieri v. Orbell*, 192 Pa. Super. Ct. 612 (1960).

In the case of *Gaynes v. Allen*, 362 N.E. 2d 197 (N.H. 1976), the buyers sued to recover a \$1,000 deposit on a \$43,900 purchase price for a dwelling. The agreement of sale was "subject to the buyer obtaining available financing." The Savings and Loan Association notified the buyer that a loan was approved for \$30,500, term of 25 years at $9\frac{3}{4}\%$ interest. The terms of the loan provided:

6. The stipulated rate of interest may be increased, but only after three months' written notice to the borrower.

7. There will be a prepayment penalty on payments in excess of 20% of original principal amount. None on a bonafide sale.

The buyers refused to accept the loan because of these two conditions. They tried to obtain a loan elsewhere, without success.

The Court found that "no evidence was introduced that the terms of the loan offered by the Savings and Loan Association were unreasonable in the mortgage market existing at the time." The Court held that the loan offer met the condition that it was subject "to the buyer obtaining available financing." The plaintiff could not recover the deposit money.

Marketable title

Marketable title, which the seller agrees to furnish the buyer, is one free from liens, encumbrances or clouds; it is such a title that a court could compel a buyer to accept. If the sale is subject to a mortgage, easement, or restriction, it must be noted in the agreement, and made subject thereto. If the owner submits an abstract of title, the buyer shall have a certain number of days (10 to 20) within which to submit any objections, in writing. The seller shall then have a certain number of days to clear up the objections. Charges for the abstract are assessed against the seller; examination of the title is at the expense of the buyer.

Title to be marketable (merchantable) need not necessarily be perfect, but a purchaser has a right to require that the title shall be of such a character that he will not be exposed to dangers of litigation as to its validity. If the facts throw a cloud on the title, rendering it dubious in the minds of reasonable men, it is not merchantable: *Ewing v. Plummer*, 308 Ill. 585 (1923).

Broker could recover a commission where he did not have knowledge of the seller's inability to deliver good title because of his wife's refusal to join in the listing contract. The broker's prospect was able to purchase the property: *Bryan, Appellant v. Jack Justice*, 287 So. 2nd 331 (Fla. 1973).

Blank vendee in agreement

Where the vendor knowingly signs an agreement of sale, with the name of the vendee not filled in, he impliedly gives his agent (the broker) authority to fill in the name of the vendee. When the vendee signs the agreement upon the terms set forth therein by the owner, it becomes an enforceable contract.

If the vendor is interested in the identity of the vendee, he should make inquiry as to his identity. If he signs the agreement first, without such inquiry, he cannot refuse to perform his contract, after it is signed by the undisclosed vendee: *McCrystall v. Connor*, 331 Ill. 107 (1928); *Oliver v. Wyatt*, 418 S.W. 2d 403 (Ky. 1967).

Assignment of leases

If possession is to be given by assignment of leases, the leases should be checked for parties, terms, and *expiration* date before the agreement of sale is signed. A provision should be incorporated in the agreement stating the expiration date of the lease. The leases should be properly assigned to the grantee at the closing, as well as any insurance policies which are to be assumed by the new owner, and the consent of the companies to the transfer endorsed thereon.

Personal property

The agreement of sale should recite in detail the specific articles of personal property which are included in the sale. These articles frequently include lighting fixtures, curtains, curtain rods, awnings, storm doors, screens, shrubbery, ranges, gas stoves, refrigerators, air conditioning units, carpets, mirrors attached to walls, coal, oil, and fireplace accessories. In the contract, the vendor should warrant that he has good title to the articles in question. At the closing the seller should execute a bill of sale for such personal property.

Assignability

Ordinarily, an agreement of sale is assignable by the vendee without any special notation to that effect. Very often a purchaser engages to buy a property without any intention of taking title but with the expectation that he will be able to sell (assign) the agreements at a higher price to a new buyer and pocket the difference. The seller cannot refuse to deed the property to the new purchaser unless he has agreed to take back a mortgage from the original purchaser in part payment of the purchase price, or unless the original buyer has assumed and agreed to pay an existing mortgage. This is based on the theory that a person has a right to select his debtor. It may make considerable difference to the seller whether the vendee, a person of financial stability, is indebted to him, or whether he must look to the vendee's assignee, a person financially irresponsible, for payment. If the owner desires to deal exclusively with the original buyer in any event, then he should stipulate that "rights under the within agreement of sale are not assignable."

In the case of *Brady v. Hoepfner, Melrose Realty & Inv. Co.*, 3rd Party Pltf., 558 P. 2d 1009 (Colo. App. 1977), an agreement of sale was negotiated by the broker for the sale of a property to Brady at \$185,000, to be paid \$24,200 in cash and the remainder by assumption of the balance due under Brady's purchase contract. Brady, in turn, negotiated a sale to Bishop. The defendant owner refused to consent to the assignment. The contract of sale provided: "This agreement is not assignable unless the prior written consent of seller is first obtained, providing, however, that said consent shall not be unreasonably withheld." The Court held that consent was

not unreasonably withheld by the seller. Nor could the broker recover a commission.

In this connection, a person preparing an agreement of sale should be fully cognizant of the legal effect of several clauses used in regard to an existing mortgage. Let us assume that Adams is selling a property to Black for \$10,000 and there is at present a mortgage against the property for \$7,000 executed by Adams to the mortgagee, Crane, three years earlier. From Adams's standpoint it is to his advantage to insist that the buyer, Black, pay all cash or provide his own financing so that Adams's mortgage to Crane can be paid and satisfied. This is the only certain way that Adams can be relieved of any further obligation under the mortgage. If Black is to take the property, however, subject to the mortgage, caution must be exercised to see that the buyer, Black, not only takes the premises subject to the existing mortgage in favor of Crane, but also that he *assumes and agrees to pay it*. If a short form clause—such as “Under and subject, nevertheless, to a certain unpaid mortgage in the amount of \$7,000 given by Adams to Crane, which mortgage dated July 1, 1974, is recorded in the office of the Recorder of Deeds of Blank County in Mortgage Book Vol. 2139 P. 422”—is used, the buyer is simply purchasing whatever equity there is in the property over and above the mortgage debt. If the property should subsequently be sold for default on the mortgage, Black would lose what money he has already paid on the property and no more.

Assumption of mortgage

Should the property at foreclosure sale be sold for less or be less valuable than the amount of Crane's claim, Black would not be liable for the deficiency to the mortgagee. Crane would have to look to Adams alone for payment. On the other hand, if the clause referring to the mortgage read exactly as it appears above, with this addition, “which mortgage the vendee expressly assumes and agrees to pay as part of the consideration herein,” Crane, in event of a deficiency judgment, could look to Adams or Black, or both, for payment. If Crane collected the full deficiency from Adams, then Adams, in turn, could look to Black for reimbursement, by reason of the mortgage *assumption* clause. Of course, it is necessary that the same clause be inserted in the *deed* from Adams to Black.

Where an owner of a contract for deed assigns the contract to a new party, the question arises whether said purchaser is liable to the owner of the legal title according to the terms of the contract for deed. In the case of *Petersen v. Johnson*, 20 N.W. 2d 507 (Wis. 1972), the assignment did not contain a clause binding the assignee to pay the purchase price. In a foreclosure action, the original seller sought to obtain a deficiency judgment against the assignee. The court held that the seller could not recover from the assignee. He could recover from the original contractee.

Consent of mortgagee not necessary

The fact that there is an existing mortgage against the property does not prevent the owner from selling it; nor is it necessary, as a general rule, to secure the consent of the mortgagee to the sale. However, the mortgage may provide otherwise, to the effect that the debt will become due and payable, in event of a sale of the premises without the written consent of the mortgagee. In periods of high interest rates, this practice of accelerating the mortgage debt, in event of a sale, becomes more pronounced. As a result, the mortgagee is motivated to call the mortgage or renegotiate the mortgage with the buyer at the higher going rate of interest.

In the case of *Peoples Savings Association v. Standard Industries*, 275 N.E. 2d 406 (Ohio 1970), the mortgage contained a clause accelerating the due date of note in the event of a sale of the premises without the prior written consent of the mortgagee. The mortgagee instituted mortgage foreclosure proceedings against the buyer on the grounds that the violation of such acceleration clause constituted a default, permitting foreclosure. The purchaser contended that the provision for acceleration based on change of ownership was void as against public policy.

The court held that the right of the mortgagee to protect its security by maintaining control over the identity and financial responsibility of the purchaser is a legitimate business objective, and is not illegal, inequitable or contrary to public policy.

This is the prevailing rule. While court decisions permit a mortgagee to accelerate payment of the debt, *in case of a sale*, the California court held in the case of *La Sala v. American Savings & Loan Association*, 489 P. 2d 1113 (1971), that a clause in a deed of trust giving the mortgagee the right to accelerate the debt in event the mortgagor should obtain secondary financing on the property, was void. In the case of a sale of the property, it divests the owner of title and imposes obligations of taxation, maintenance and repair upon a new owner, with whom the mortgagee had no privity of contract.

Seller's damages for breach by buyer—fails to consummate purchase

If the seller intends to sue the buyer for damages resulting from the latter's breach, he should first attempt to receive a bona fide offer for the same property from another buyer. He should then notify the defaulting buyer as to the best price offered and advise the buyer that unless he can get the seller a higher price, the property will be sold at that price and the buyer will be held responsible in damages for the difference between the contract price and the best price that the seller could obtain.

A clause used in this connection would read:

In the event of default by the Buyers, the Sellers may, at their option, elect to: (a) Retain the earnest money deposit and all monies paid on account of the purchase price as liquidated damages, in which event this Agreement shall become null and void and both parties shall thereupon be released of all further liability hereunder. It is hereby agreed that, without resale, Seller's damages will be difficult of ascertainment and that the earnest money deposit and all monies paid on account of the purchase price constitute a reasonable liquidation thereof and not a penalty.

In lieu thereof, Seller may elect either or both of the following remedies: (b) Apply the earnest money deposit and all monies paid on account of the purchase price and proceed with an action for specific performance; (c) Apply said monies toward Seller's loss on the resale of said property and proceed with an action at law for all damages sustained by Seller; Provided, however, that no such election of (b) or (c) shall be final or conclusive until full satisfaction shall have been received.

If the agreement of sale does not specify the damages available to the seller upon the buyer's default, the measure of damages would be the difference between the contract price and the market value of the property as of the date of the breach. It is not the difference between the contract price and the lower price obtained on a resale at a *later date*: *MacRitchie v. Plumb*, 245 N.W. 2d 582 (Mich. App. 1976).

Penalty and liquidated distinguished

If the damages flowing from the breach are readily ascertainable at the time the contract is made, the clause relating thereto is a penalty, and unenforceable; if they are not so ascertainable, the clause is then considered one for liquidated damages, and enforceable. It should also be kept in mind that if the amount of damages agreed upon is unconscionable, the courts may relieve against the forfeiture: *Hutchison v. Tompkins*, 259 So. 2d 129 (Fla. 1972). In *Hook v. Vomar*, 320 F. 2d 536 (Fla. 1968), the Court held loss of a \$30,000 deposit on a \$95,000 contract of sale was unconscionable; forfeiture of a \$3,000 deposit in a \$30,000 transaction would be proper. The liquidated damage amount must be fair and reasonable: *Simmons v. Urban Redevelopment*, 497 S.W. 2d 705 (Ky. App. 1973). In the case of *Bremer v. Myers*, 545 S.W. 2d 235 (Tex. App. 1976), vendors brought an action against purchaser to recover damages for breach of contract to purchase real estate. Agreement provided: "In the event Purchaser is the defaulting party, Seller shall have the right to retain said cash deposit as liquidated damages for the breach of this contract." The deposit was \$200. The Court held that the vendors were limited to the \$200 as liquidated damages, and did not have the *option* to recover actual damages.

In the case of *Wegg v. Henry Broderick, Inc.*, 557 P. 2d 861 (Wash. App. 1976), the plaintiff buyers signed an earnest money agreement for the purchase of an apartment building in Seattle at \$240,000, payable \$40,000 cash, and balance in monthly installments of \$1,500. Subsequently, due to a Boeing layoff, rent strike, and other problems, the buyers were in financial difficulties. The purchasers were under the impression that their liability was limited to the money they had paid the seller. The seller insisted upon payment of the entire balance due on the contract. A settlement was negotiated. The buyers then sued the broker for the loss sustained. The Court sustained a verdict in favor of the purchasers, based on uncontradicted expert testimony that the broker has a duty to explain to the buyers that upon default on the contract, a buyer does not have a right to return the property to the seller and terminate all liability, but that the seller can sue for specific performance of the contract. The broker failed to do this.

In the case of *Bando v. Cole*, 250 N.W. 2d 651 (Neb. 1977), the purchaser sued to recover a \$12,000 deposit, paid on account of the purchase of a farm for \$80,000. The agreement provided that in event of the purchaser's default, the seller had the option to forfeit all payments made. On the same day the agreements were signed, the buyer also signed an "Option to Purchase Real Estate" form, prepared by the Farmers Home Administration, for the purpose of obtaining a mortgage loan. This instrument provided that if a loan could not be obtained, any down payment would be refunded. The purchaser was never able to obtain financing and the seller refused to refund the deposit.

The Court held that the agreement of sale was complete and the option agreement was intended only as an *accommodation* to the buyer to obtain financing through Farmers Home Administration. The purchaser could not recover.

Buyer's damages for breach by seller

Where the seller breaches an agreement of sale, the buyer's measure of damages depends upon whether the seller is guilty of fraud in the breach. If no fraud is present, the buyer can recover only his down payment and actual expenses. Where a borough ordinance is discovered, which provides for widening of the street upon

which the property abuts, the buyer could rescind his contract to purchase and recover the deposit money and actual expenses. The same result would follow where a lot is of less width than contracted for, even though slight, and the buyer viewed the premises. False statements of value, or cost of the building, or the seller's arbitrary refusal to perform would constitute fraud and the buyer could then recover the full value of his bargain.

Usually, where a seller refuses to consummate the agreement of sale, the buyer will sue for specific performance to compel the seller to execute and deliver a general warranty deed to him. Plaintiff must be free from default: *Menke v. Foote*, 261 N.W. 2d 635 (Neb. 1978).

Options

A contract of sale is bilateral in its obligations, in that it binds both parties; whereas, an option gives the second party a mere privilege to purchase the property, if he chooses: *Rooney v. Dayton-Hudson Corp.* 246 N.W. 2d 170 (Minn. 1976).

An option is a contract. It may be defined as an agreement, in writing, whereby the owner (optionor) gives to another (optionee) the exclusive right *for a limited period of time* to purchase (or lease) his real estate upon certain terms and conditions: *Johnson v. Worcester Business Development Corp.*, 302 N.E. 2d 575 (Mass. 1973). The option requires a consideration to support it, or it may be under seal. The consideration may be nominal, that is, \$1.00. If the option recites a \$1.00 consideration, that is sufficient, even though it has not actually been paid. Time is the very *essence* of an option agreement, and if not exercised prior to the expiration date, it automatically expires: *Mattco, Inc. v. Manton Radio Ass'n., Inc.*, 246 N.W. 2d 222 (N.D. 1976).

Unlike an agreement of sale, there is no period of grace for performance beyond the expiration date. Where the owner is married, the wife's signature should be obtained to the option agreement of sale so that, if the optionee exercises the option, the wife of the optionor can be compelled to join in the agreement of sale. Death of the owner during the term of the option would not affect the optionee's rights under the agreement. Where the option is extended or renewed for an additional term, there *must* be additional consideration for the added term. An option is assignable in the same manner as the ordinary agreement of sale. The purpose of the option is to give the holder, in return for the consideration paid, a period of time to make up his mind whether he will elect to purchase the property in question. During the specified time, the property is withdrawn from other purchasers. If the optionee does not exercise the option, the money paid for the option is forfeited. However, the option agreement may specify that if the option is exercised, the money paid for the option shall be credited to the purchase price of the property.

Any rents paid during the period of the option belong to the owner, until the option is exercised and the deal consummated.

A letter from the optionee to the owner, during the option period, that he desires to exercise the option to purchase the property as therein set forth within the next 10 days, without tendering the purchase price, prior to the expiration date of the option, was fatal to the optionee's cause: *Adams v. Swift*, 500 S.W. 2d 437 (Tenn. 1973).

In the case of *Waterway Gas 'N Wash, Inc. v. Sandbothe et al*, 550 S.W. 2d 617 (Mo. App. 1977), the plaintiff brought suit to recover \$2,500 paid for an option to buy land. The option provided for refund of the deposit, if optionee used its best efforts to obtain rezoning, but failed. The plaintiff-optionee filed a picture of the

proposed site and its legal description with the County Planning Commission. The commission requested additional information, which the optionee never furnished. The application was refused. Since the court found that the plaintiff had not employed diligence to secure rezoning, a refund was denied the plaintiff.

Where a lease is signed by two lessees, one of the lessees, alone, could not exercise an option to renew the lease: *Kleros Bldg. Corp. v. Ballagalia*, 109 N.E. 2d 221 (Ill. App. 1952).

When an option is executed, it is a good precaution to prepare and attach the proposed agreement of sale, spelling out the terms upon which the option is to be exercised.

Where the last day for giving written notice for exercise of option was October 21, 1974, written notice mailed October 21, 1974 and not received by optionor until after that date, was held too late: *Salminen v. Frankson*, 245 N.W. 2d 839 (Mich. App. 1976).

Installment land contracts

An installment land contract is also called either a contract for deed, or a conditional sales contract.

A purchaser, under a land contract for deed, or even in an agreement of sale, is not required to sign the instrument. His *acceptance* of the instrument, signed by the seller, accompanied by the payment of a deposit, makes the contract bi-lateral: *Stachnik v. Winkel*, 213 N.W. 2d 434 (Mich. 1973).

In the promotion of subdivision tracts, many lots are sold on an installment basis. A modest down payment is made and then periodic monthly payments are made until the full consideration price is liquidated, at which time a deed is delivered.

Considerable improved real estate is also sold in the same manner. Should the buyer default in his payments, he forfeits the payments already made. In the alternative, the seller could also elect to hold the buyer to his contract. This method permits a family of modest means to acquire a home through periodic payments out of income. The monthly payments are usually first applied to interest and carrying charges and the balance to the unpaid principal indebtedness. Many such installment contracts, often termed "contract for deed," provide that upon payment of a certain amount of the purchase price (often 50 per cent), the vendee will receive a deed for the property. He, in turn, will then execute a purchase money mortgage to the vendor for the balance of the purchase price. The contract for deed usually provides that in the event the purchaser defaults, the balance of the purchase price, at the option of the seller, shall become payable forthwith. A clause may even be included which would permit the seller to confess judgment against the buyer for the full amount unpaid. An inherent danger in the installment contract, from the standpoint of the buyer, is that judgments may be entered against the seller during the long term the contract has to run. Such judgments, of course, would be a lien against the property.

Where vendors wrongfully rescinded a conditional sale contract for a motel property, the buyers were entitled to recover principal payments, as well as interest from date of wrongful ejectment. The vendors were not entitled to a set-off in amount of rents and profits accruing to buyers while they were in possession: *Smeeckens v. Bertrand*, 302 N.E. 2d 502 (Ind. 1973).

Often, it is a matter of choice, with buyer or seller, whether to use a land installment purchase contract, or a deed and mortgage. The seller's advantage in using the land contract is that in case of default, he can reclaim title to the property more readily than through foreclosure on a mortgage. The disadvantage to the seller is

that in case he himself needs money quickly, the land contract cannot be sold as readily as a mortgage except, possibly, at a great financial loss.

An "instrument land contract" or so-called "contract for deed" evidences a sale of land and an obligation of vendor to convey the land and of purchaser to pay the purchase price in installments over a period of time. It is essentially a security instrument, taking the place of a purchase money mortgage: *Hand L. Land Co. v. Warner*, 258 So. 2d 293 (Fla. 1972).

From the standpoint of the buyer, it appears preferable to require a deed and for the buyer to give the seller a purchase money mortgage for the balance due. To all intents and purposes, the buyer is the legal owner of the premises. Should the buyer default on the mortgage, title is not foreclosed to him summarily. He still has a period of grace to redeem the property, as provided for in the statute. Practical considerations, dependent on how much money the buyer has paid on account of the purchase price, may well dictate whether a land contract or a deed and mortgage should be used.

Where the land contract is used, the seller can protect himself by a clause in the contract, prohibiting assignment of the contract, mortgaging or leasing the property by the buyer, except upon the written consent of the seller. In the absence of a non-assignment clause in the land contract, the buyer would have these several privileges. If assigned, the assignment should be recorded.

The vendee in the land contract pays the taxes and assessments. Under a standard insurance policy, the vendee must pay the premiums, and in case of a fire loss the proceeds are applied to the purchase price.

Strict foreclosure upon default

On default upon a land contract, the remedy of strict foreclosure is frequently resorted to in some states. The vendor, thereby, foregoes any right to collect the full amount of debt. He cannot demand return of the land and also ask for the total purchase price. Strict foreclosure operates as a rescission, voiding or "calling off" of the contract by the vendor. The period of redemption is within the sound discretion of the court. Consideration should be given to ability of purchaser to redeem his state of solvency. Value of the land and the likelihood of refinancing are deemed relevant facts. Also taken into consideration are the size of the vendee's equity and the length of the default. The courts will attempt to do equity between the parties: *Kallenbach v. Lake Publications, Inc.*, 142 N.W. 2d 212 (Wis. 1966).

However, in the case of *Cooper v. Jefferson Investment Co.*, 246 N.W. 2d 311 (Mich. App. 1976), the Court held that in a land contract, an acceleration clause, upon default by the vendee, requires no preliminary notice of intent to foreclose. Suit can be instituted for the full amount.

A vendee, under a land contract, became delinquent in his monthly payments during 1963. In 1966, the vendor started an action to quiet title. The vendee then offered to pay the entire balance due, plus interest. The vendor refused to accept payment. The vendee next sued for specific performance. The court decided in favor of the vendee, treating the land contract as a mortgage. The vendee had the right to redeem the property: *McFadden v. Walker*, 488 P. 2d 1353 (Cal. 1971).

The mere fact that a seller has permitted the curing of previous defaults is not an end unto itself to cure future defaults of the same nature: *Rogers v. Newton*, 340 So. 2d 768 (Ala. 1976).

Where there is a "time of the essence clause" in the land contract, it may be waived by the conduct of the vendor in accepting payments at irregular intervals. Where a land contract contained a time of the essence clause for prompt payment

of installments, the vendor is deemed to have waived the clause by accepting, without complaint, delay in making payments for six months: *Farmer v. Groves*, 555 P. 2d 1252 (Or. 1976). The time is of the essence clause can be revived by the vendor giving the purchaser a warning notice that strict compliance with the contract would be insisted upon in the future: *Kirkpatrick v. Petreikis*, 358 N.E. 2679 (Ill. App. 1976).

Remedies available to vendor under defaulted land contract include: action for breach of contract, ejectment, eviction, foreclosure, rescission, peaceful repossession, suit for purchase money, specific performance, summary proceedings and action to quiet title. Election of one remedy barred pursuing an inconsistent remedy; for example, having elected remedy of forfeiture and claim for possession, vendors could not seek judicial foreclosure and deficiency judgment; *Gruskin v. Fisher*, 245 N.W. 2d 427 (Mich. App. 1976).

Sunday contracts

The mere carrying out of negotiations on a Sunday does not invalidate an agreement of sale which is completed on a secular day: *Heckel v. Burtchaell*, 72 A. 2d. 794 (N.J. App. 1950). It is also true that when a broker carried out negotiations on a Sunday, and his listing contract was executed on a week day, a claim for a commission would not be prejudiced: *Mercner v. Fay*, 177 A. 2d. 481 (N.J. 1962).

In the case of *Chadwick v. Stokes*, 162 F. 2d 132 (1947), the court observed that in 1946, following World War II, there was a severe housing shortage. On August 1, 1946, the plaintiff, an officer in the U. S. Army, received orders to leave Atlanta that same day and report to Ft. Dix, New Jersey, no later than August 5, 1946, for separation of service. On August 3, 1946, he located a house in Lansdale, Pennsylvania, which was suitable for the family, which included three children, ten years, five years and three years old, respectively. A contract of sale was signed the next day, Sunday.

The court concluded that the sale was not within the prohibition of the Sunday law, for two reasons:

- 1. Procuring a home was not a worldly employment.
- 2. It constituted performing a work of necessity.

AGREEMENT OF SALE

Date of this Agreement April 4, 1978
Name of Seller HELEN L. LA PORTE, unmarried, of the
Borough of Zelienople, County of Butler, and State of Pennsylvania
Name of Buyer ROLAND GERARD, of the City of Cleveland,
County of Cuyahoga, State of Ohio
Name of Real Estate Agent Ajax Realty Company

WITNESSETH, that Seller, for the consideration hereinafter mentioned, does covenant, promise, grant and agree, to and with the said Buyer, by these presents, that Seller shall and will, on or before June 1, 1978 at the proper costs and charges of the Seller, by deed of general warranty, well and sufficiently grant, convey and assure unto the said Buyer, in fee simple, clear of encumbrances, excepting coal, gas, oil and other mineral rights heretofore sold, reserved or leased, and existing building or use restrictions, encroachments, easements, rights of way and party walls, if any, of record, the following described property:

ALL that certain lot or piece of ground situate in the Borough of Mt. Oliver, County of Allegheny and State of Pennsylvania, being Lot No. 36 in the Crescent Hills Plan of Lots, of record in the Recorder's Office of Allegheny County in Plan Book Volume 29, pages 13 and 14, and being more particularly bounded and described by deed recorded in the Recorder's

Office of Allegheny County in Deed Book Volume 2516, page 780.
HAVING thereon erected a six (6) room, two (2) bath, brick and stone dwelling with integral garage, known as 3421 Hillmont Avenue.

TOGETHER with all and singular the buildings, improvements, and other the premises hereby demised, with the appurtenances, it being understood that gas and electric light fixtures, heating and plumbing systems, and laundry tubs installed in said buildings and TV antenna are included in this sale.

In consideration whereof Buyer doth covenant, promise and agree, to and with Seller, by these presents, that Buyer shall and will well and truly pay or cause to be paid unto the said Seller the sum of *Twenty-One Thousand (\$21,000.00) Dollars in manner following: One Thousand (\$1,000.00) Dollars evidenced by cash [], personal check [x], cashier's check [], note [] as deposit on account of the purchase price, and the balance of Twenty Thousand (\$20,000.00) Dollars, in cash, upon delivery of deed. It is understood and agreed that Buyer is to pay Pennsylvania Stamp Transfer Tax; Seller to pay local tax.*

Taxes, interest, and rents to be pro-rated as of ... date ... of delivery of deed. For title references see Deed book Vol. ... 2516 ..., page ... 780 ... Possession to be given upon delivery of deed. The buyer, at his own expense, agrees to place adequate fire insurance on the premises covered by this agreement.

Should the buyer fail to make settlement, as herein provided, the sum or sums of money paid on account of the purchase price, may, at the option of the seller, be (a) applied to the purchase price in an action for the purchase price; or, (b) may be applied to any loss suffered by the seller on the resale of the property without any advance notice to the Buyer of said proposed resale; or, (c) may be retained by the Seller as liquidated damages. In the latter case, this agreement of sale shall become null and void.

Should the Seller default in the performance of these agreements, the Buyer, may, at his option (a) waive any claim for loss of bargain and the Seller agrees to refund to the Buyer all sums of money paid on account of the purchase price, and any costs of expenses incurred; or, (b) sue for specific performance of the contract; or, (c) sue in an action at law for damages.

The earnest money paid under this contract is to be held in escrow by the Broker. It is understood between the parties hereto that the property herein sold has been inspected by the Buyer, or his or their agent, and that the same is being purchased as a result of such inspection.

It is understood that *The Ajax Realty Company* is acting as agent only in bringing the Buyer and Seller together and will in no case whatsoever be held liable to either party for the performance of any term or covenant of this agreement or for damages for non-performance thereof. Seller agrees to pay the said broker 7 per cent commission (\$1470.00). This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used in this agreement, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the said parties to this agreement have hereunto set their hands and seals, the day and year first above written.

SEALED AND DELIVERED IN THE PRESENCE OF:

As to 1 *Ben Adams*
As to 2 *James Doyle*

1. *Helen L. La Porte* (SEAL)
(Seller)

2. *Roland Gerard* (SEAL)
(Buyer)

CONVENTIONAL MORTGAGE

DATED..... April 4, 1978.....

Helen L. La Porte (SEAL)
Seller

Questions on Agreements of Sale

1. Q. What is an action for specific performance of an agreement of sale?
 - A. It is a suit instituted by one party, to compel the other party to consummate the agreement of sale according to its terms. The suit is brought in a court of equity, because specific performance of a contract is a special or extraordinary remedy. If money damages only were sought, the suit would be brought in the civil side of the court.
2. Q. Can an aggrieved party to a contract of sale sue only for monetary damages?
 - A. Yes. An action in assumpsit would lie for breach of the contract.
3. Q. In a suit for specific performance of a sales agreement, the law requires special formality. What is meant by specific formality?
 - A. The agreement of sale must be in writing in order to bring an action for specific performance.
4. Q. What is the distinction, in law, between communication of an acceptance of an offer, and revocation (or withdrawal) of an offer?
 - A. The communication of the acceptance of an offer takes effect from the time it is sent, if the medium of communication of the acceptance is the same as the method used in communicating the offer (for example, postal service used in both instances). A revocation takes effect when it is *received* by the offeree, if made before acceptance of the offer.
5. Q. Adams, in Orlando, sends a letter to Bates, in Jacksonville, on January 30, 1978, offering to sell his home for \$57,000. The letter is received by Bates on February 1, 1978. On February 10, 1978, Bates writes Adams, accepting the offer. This letter is received by Adams on February 13, 1978. However, Adams mailed a letter to Bates on February 9, 1978, withdrawing his offer to sell, which is received by Bates on February 11, 1978. Is there a contract?
 - A. Yes, as of February 10, 1978, when Bates mailed his letter of acceptance.
6. Q. Chase listed his property for sale with Bender, under an exclusive right to sell contract. The listing stated that Bender was employed "for the sale" of premises, etc. Bender obtained a buyer, Dolan, upon the listed terms. He signed an agreement of sale with Dolan—Herbert Chase, by Tom Bender, Agent. Chase, at the time, was on an extended cruise. Upon his return, Chase repudiated the agreement. Dolan sues for specific performance. Will he succeed?
 - A. No. Bender is a special agent, with limited powers. His employment "to sell" merely authorizes him to obtain a buyer, but did not include the right to sign an agreement of sale, binding upon the owner.
7. Q. Who are the principal parties to an agreement of sale?
 - A. Seller and buyer, commonly called vendor and vendee, respectively
8. Q. Can a broker acquire rights for a commission under an agreement of sale, since he is not a party to it?
 - A. Yes, if the agreement states that the broker negotiated the deal and the seller owes the broker a commission.
9. Q. Is an oral agreement of sale invalid?
 - A. It is invalid insofar as maintaining an action for specific performance is concerned, but it may give rise to an action for damages.
10. Q. If the date is omitted in an agreement of sale, is it invalid?

- A. No. A date is merely evidence of the time when the agreement of sale was signed, but it is not essential for the validity of the instrument.
11. Q. What information should an agreement of sale contain?
 - A. Names of the parties, consideration price, description and terms of sale.
12. Q. Is a particular form required?
 - A. No, so long as it contains the above information and clearly expresses the intention of the parties.
13. Q. Is an offer to purchase, in writing, which states that a formal agreement will be executed at a later date, desirable?
 - A. No, because differences may arise as to what terms should be included in the formal instrument, so that, if the differences cannot be resolved, either party could withdraw from the deal.
14. Q. In order for an agreement of sale to be enforceable, how many elements of the law of contracts must be present?
 - A. Six.
15. Q. What are they?
 - A. Offer and acceptance, consideration (or seal, in some states), capacity of parties, reality of consent, legality of object and special formality.
16. Q. What is meant by reality of consent?
 - A. The contract must be free from mistakes, misrepresentations, fraud, duress or undue influence.
17. Q. Chappel, seller, and Stone, buyer, enter into an agreement of sale for a farm, located in Erie County. The farm is located in the Harrison School District. Stone believes the farm is located in the Baldwin Township School District. It is located in Hays Township, three miles from the school. Can Stone rescind the agreement on the grounds of mistake?
 - A. No, this is a unilateral mistake, not a mutual mistake, so that Stone is bound by his agreement to purchase the farm.
18. Q. What is the purpose of Statute of Frauds and when was it first enacted?
 - A. It is an act for the prevention of fraud and perjury. It was first enacted in England, 29 Charles II, year 1676. It requires certain real estate contracts to be in writing.
19. Q. Define an agreement of sale.
 - A. A written contract whereby the purchaser agrees to buy certain real estate and the seller agrees to sell upon terms set forth therein.
20. Q. When a broker receives an earnest money deposit from a buyer, may he keep the money on file in his office pending the closing of the deal?
 - A. No; he should deposit it immediately in his trust or escrow account.
21. Q. What recourse would a seller have against the broker, if the buyer backed out of the transaction before it was closed?
 - A. None; the broker is not responsible for the buyer's default.
22. Q. Anthony gives Benson, a broker, a written exclusive contract to sell his property at \$5,000. Benson procures Clark as a purchaser upon Anthony's terms. Clark signs an agreement but Anthony, the owner, refuses to sign. Does Clark have any right of action against Anthony?
 - A. No. Anthony did not sign the agreement of sale. Anthony is not liable to Clark but would be liable to Benson for a commission.
23. Q. Wilson and Peters execute an agreement of sale for Wilson's property at \$9,000, under and subject to a mortgage of \$5,000 which Peters assumes and agrees to pay. Peters assigns the agreement to Crane. Wilson refuses to recognize Crane. Can Crane compel Wilson to execute a deed to him?
 - A. No. Ordinarily an agreement of sale is assignable. However, where the financial responsibility of the buyer is involved, as here, the seller has a right to select his debtor.
24. Q. What conditions must be met in a memorandum in writing to comply with the Statute of Frauds?

- A. The writing must name the consideration, the property to be sold, and the terms, and it must be signed by the seller or by his lawful agent authorized in writing to do so.
25. Q. Beatty lists certain property with Coleman for sale at \$40,000. He informs the broker that the property contains 3.5 acres. Coleman obtains a signed offer from Dixon at that price, which Beatty accepts. The agreement states 3.5 acres "more or less." The recorded deed description measures 2.5 acres. This is confirmed by a survey. Dixon demands a refund of his deposit money. Beatty refuses, relying on the "more or less" clause in the agreement. Decide.
- A. Dixon will win. "More or less" is no defense, where there is a substantial difference in the acreage. A one-acre discrepancy in a $3\frac{1}{2}$ -acre tract is substantial.
26. Q. Does the term "valuable consideration" mean only a money consideration?
- A. No. A valuable consideration may consist of services, chattels or anything which could be measured in monetary terms.
27. Q. Assume that after a sales contract has been written and executed, a slight change is made in the terms or conditions, and that the broker, in the presence of the interested parties, alters the writing to conform to the new agreement: what precaution should the broker take to protect himself against any future controversy?
- A. He should have all parties to the contract place their signature or initials in the margin opposite or nearest the alterations.
28. Q. Arnold agrees to sell a property to Winters for \$10,000—\$500 down and the balance in cash. Winters is unable to complete the deal and he obtains Summers, to whom the agreements are assigned. Two days later Summers finds that his wife disapproves the purchase, and he assigns the agreements to Davidson. Arnold, a business competitor of Davidson, refuses to execute a deed to him. Who will win?
- A. Davidson can compel Arnold to execute a deed to him as the agreement of sale was assignable.
29. Q. An agreement of sale is made out between Alfred Sims, vendor and Don Cosgrove, vendee. It is signed, however, by Alfred Sims and Elsie Sims, his wife, as well as by Don Cosgrove. The wife refuses to execute the deed on the grounds that she is not named as a party in the agreement proper. Must she join in the deed?
- A. Yes. Her signature is sufficient to show an intention on her part to be bound.
30. Q. Abrams signs an agreement to purchase Bell's property at \$10,000 and pays \$500 as deposit money. Later Abrams fails to complete the deal and Bell keeps the deposit money. Three months later Bell sells the same property to Clark for \$9,000 and now sues Abrams for an additional \$500. Can he recover?
- A. No. When Abrams failed to perform, Bell could have sued for the purchase price. Since he elected to keep the \$500 as liquidated damages, he has no other remedy.
31. Q. A buyer asks the broker not to deposit his earnest money check of \$1,000 for ten days. The check is later deposited and returned on account of insufficient funds. The buyer fails to complete the transaction. Is the broker liable to the owner?
- A. Yes. The broker is required to deposit the earnest money promptly, unless the owner knew and agreed to the delayed deposit.
32. Q. A broker negotiated the sale of a property for \$40,000, his commission to be 6 per cent. The buyer deposited \$4,000 as earnest money. Before the deal was closed, buyer and seller mutually agreed to call the deal off, the owner to keep the \$4,000 deposit. The owner offers the broker a commission of 6% on the \$4,000 deposit. The broker claims \$2,400. Decide.
- A. The broker is entitled to \$2,400 as he fully performed his contract with the owner in obtaining a purchaser acceptable to the owner.
33. Q. How should a down payment clause be worded to protect the seller?
- A. "\$500 upon the signing of these agreements, receipt of which is hereby acknowledged, and which sum may, *at the option* of the party of the first part, be retained as liquidated damages in event of breach of any of the conditions contained herein by the party of the second part, and the balance of \$9,500, in cash, upon delivery

- of deed.”
34. Q. How large a down payment should the seller require?
A. At least 10 per cent of the purchase price; a larger amount if the closing is at a date pretty far in the future or the responsibility of the buyer is questionable.
 35. Q. An agreement of sale calls for the closing on Feb. 1, 1978. The buyer is unable to close at that time. Will he forfeit his earnest money (down payment) if he fails to close on Feb. 1, 1978?
A. No. The buyer has a reasonable time after Feb. 1, 1978 to close the deal. What is a reasonable time depends upon the circumstances of each case. 30 days is certainly a reasonable time.
 36. Q. Suppose, in the preceding case, the seller has certain commitments on Feb. 1, 1978 and wants to be certain the deal will be closed on that date. How can the seller protect himself?
A. By providing that the date of closing is “of the essence” of the agreement.
 37. Q. When a buyer defaults, what steps should a seller take?
A. Make a formal *tender* of the deed and *demand* of the consideration price.
 38. Q. When is tender excused?
A. Tender is unnecessary where there is an anticipatory repudiation by the buyer; when the buyer has notified the seller before the closing that he will not go through with the deal.
 39. Q. Is it necessary to have an agreement of sale acknowledged?
A. No. If acknowledged, the agreement can be recorded. The unexecuted agreement would then constitute a cloud upon the title.
 40. Q. Kappel granted an option to Wilson to buy certain land for \$50,000 for 60 days from June 15, 1978, “settlement to be made within 90 days from date the option is exercised.” On August 3, 1978, Kappel entered into an agreement of sale with Cosgrove, subject to the rights of Wilson, who exercised his option on August 5, 1978, settlement to be made “one year” from that date. Cosgrove sues for specific performance. Will he succeed?
A. No. Cosgrove is not entitled to specific performance. Time is not of the essence in respect to the settlement date of an option contract. Wilson’s right included the right to renegotiate in good faith, a reasonable extension of the settlement date. Cosgrove’s agreement was expressly subject to that right exercised by Wilson.
 41. Q. If the agreement of sale makes no provision for the apportionment of taxes, whose responsibility are the taxes?
A. The seller’s, unless local custom dictates otherwise.
 42. Q. Burns agreed to sell certain land to Jones, a purchaser, brought by Rice, a broker. The terms as written in the sales contract were “Selling price \$5,000; 1/2 cash balance 1 to 4 years, with interest at 6%.” Is the contract enforceable?
A. No; it is too vague and indefinite to be enforced, on account of the 1-to-4-year provision.
 43. Q. What fixtures pass with the sale of real estate under an agreement of sale?
A. Only those articles which may be considered as constituting a part of the freehold.
 44. Q. Under what circumstances may an agent sign for his principal an agreement or contract required to be in writing?
A. When he has a power of attorney duly recorded.
 45. Q. Must an agreement for the sale of real estate be in writing?
A. Yes, unless the purchaser has gone into possession, paid part of the purchase price, and made improvements.
 46. Q. What should a broker do with down payments or earnest money that he has received?
A. Deposit them in a trust account.
 47. Q. Why is it important that a broker have the seller sign an agreement of sale and deliver a signed copy to the buyer as soon as possible?
A. Because the purchaser may revoke his offer to purchase prior to the communica-

tion to him of the seller's acceptance of the offer.

48. Q. Can a contract for the sale of real estate be enforced if the description is not sufficient to identify the property?
- A. No.
49. Q. What is meant by a so-called "scavenger sale"?
- A. A sale of property which has reverted to the state because of nonpayment of taxes.
50. Q. Reed signs an agreement of sale to purchase certain real property from King on February 1, 1978 for \$17,500. He pays \$1,000 as a down payment and with King's consent, Reed moves in on February 15th. The deal was to be closed on March 15, 1978, but differences arose due to a faulty septic tank. The deal is not closed and Reed remains in possession until May 1, 1978. King claims a rental of \$100 per month from February 15th to May 1st for use and occupancy. Can he recover?
- A. No. Reed did not move in under an express or implied *lease*. He simply took possession under the sales agreement and King cannot recover for use and occupancy. (Moral: If vendee is to take possession, have him sign a tight form lease for one month, with renewal on a monthly basis.)
51. Q. An offer to purchase is signed by a purchaser on January 28, 1978, and he pays \$1,000 as a deposit at that time. It contains a clause to the effect that the buyer agrees to keep the offer open without fail for 5 days, within which time the seller may accept the offer. On January 30, 1978, the buyer notifies the owner that he is withdrawing the offer and demands the return of his \$1,000. Can he do so?
- A. Yes; he can withdraw the offer at any time before it is accepted. The five days simply means that the offer will automatically expire at the end of that period unless accepted or previously withdrawn.
52. Q. What is the purpose of keeping a purchaser's deposit separate and apart from your own?
- A. The money does not belong to the broker. It is being held by him for the account of the owner and should therefore be treated as trust funds.
53. Q. A broker holding a listing on a property secures from a prospect a deposit and a signed agreement to purchase. What steps should be taken next?
- A. Four copies should be signed by buyer. He must leave one copy with the buyer, take three copies to the seller and have him sign all three copies. He leaves one copy with the seller, delivers one copy bearing the seller's signatures to the buyer, and keeps one copy for his own file.
54. Q. Should a broker deduct his commission from a deposit for the purchase of property if the offer of purchase is declined by the owner?
- A. No. There has been no binding contract of sale. Any commission due the broker should be paid by the seller.
55. Q. What is a "binder" in real estate?
- A. Earnest money paid to show good faith until a formal agreement is signed.
56. Q. What are the essentials of a valid contract for the sale of real estate?
- A. The date, names of the parties, description of the property, terms of the sale, and signatures of the parties.
57. Q. In a contract for the sale of real property, by what term is the party known who (1) is selling the property? (2) is buying the property?
- A. (1) Vendor. (2) Vendee.
58. Q. If you, as broker, sell a property for your client and he takes back a purchase money mortgage in part payment, is he a mortgagor or mortgagee?
- A. Mortgagee.
59. Q. If a vendor signs an agreement of sale for real estate and transmits it by messenger to a notary public, can the notary legally take the acknowledgment of the signature?
- A. No. The person making the acknowledgment (the affiant) must appear in person.
60. Q. What is meant by the clause commonly found in contracts for the sale of real property reading "rents, taxes, interest on mortgages, and all premiums on insurance

policies in force at date hereof are apportioned" ?

- A. The items are prorated between buyer and seller as of the date of closing.
61. Q. A contract is made for the sale of real estate. Before taking title to the property and not being certain of the boundaries, the purchaser causes a (1) _____ to be made. Upon inspection of this document he discovers that telephone poles are situated on the plot of land and that for this reason the telephone company has a (2) _____ on the seller's land. He also discovers that one of the walls of a garage built on the rear portion of the land is situated on the adjoining property and this constitutes an (3) _____ on the adjoining property. Disturbed by these physical facts of the property he is about to buy, the purchaser orders an (4) _____ for the purpose of ascertaining the soundness of the title of the property.
 - A. (1) survey.
 - (2) right of way.
 - (3) encroachment.
 - (4) abstract of title.
62. Q. A broker receives a \$1,000 earnest money deposit. The parties have a controversy at the closing and the deal is not consummated. Buyer and seller demand the \$1,000 deposit. Who is entitled to it?
 - A. Neither buyer nor seller. The broker is required to hold the deposit until the transaction is consummated or terminated. Since the matter may result in litigation, the broker should retain the money until court action is instituted. Then he should pay the money into court (interpleader) and enter a claim for his commission with the court.
63. Q. A broker had a \$5,000 bond filed when he obtained his real estate license. The broker is sued on a furniture claim and the creditor recovers a judgment for \$1,700. Can the creditor recover on the broker's real estate bond?
 - A. No. The claim did not result from a real estate transaction.
64. Q. (1) Why is it advisable from the standpoint of the purchaser to have inserted in the real estate contract that he is taking the property subject to an existing mortgage, rather than that he is assuming payment of the mortgage indebtedness? (2) If the purchaser does assume the mortgage indebtedness, does that relieve the original mortgagor of this obligation?
 - A. (1) Under this type mortgage clause (the short form) the purchaser is not liable to the mortgagee for payment of the mortgage indebtedness. The buyer can lose the property upon a mortgage default, but the mortgagee cannot collect a deficiency judgment from the purchaser of the property.
 - (2) No.
65. Q. In relation to real property, in what instances are the following terms employed?
 - (1) "Time is of the essence of this contract."
 - (2) "To apportion as of the date of delivery of deed."
 - A. (1) Provision in agreement of sale which specifies the date for closing and makes it mandatory for the parties to perform on said date.
 - (2) Refers to prorating of taxes, rents, interest, and insurance.
66. Q. What is meant by an action of "specific performance" ?
 - A. Court action to compel vendor to execute a deed to the vendee in accordance with the terms of the agreement of sale.
67. Q. Adams offers to sell his residence to Burns for \$21,000 on a cash basis. Burns makes a counter proposition 5 days later, agreeing to buy the property for \$20,000, if the deal is closed in 90 days, so that he can sell his home in the interim. Adams rejected the counter proposition. Burns sells his home three weeks later and agrees to buy the Adams home for \$21,000. Burns signs the contract, originally prepared by Adams, at \$21,000. Adams now refuses to sell. Can Burns compel Adams to honor the original agreement?
 - A. No, the counter proposition was a rejection of Adams' offer and an offer, once re-

- jected, is gone forever, unless the offeror is willing to reinstate the offer.
68. Q. An agreement of sale includes the sale of all rugs and draperies. After the deal is closed and the buyer takes possession, he finds that the seller has removed the kitchen linoleum, which was not cemented to the floor. Does the buyer have any remedy?
- A. No; the linoleum is personal property, which could be removed from the premises by the seller.
69. Q. Mary Richards sold her home to Adam Frey on February 15, 1978. The deal was to be closed on April 5, 1978. Mary Richards was moving into a new home, which was to be completed by April 1, 1978. Due to the contractor's difficulties, the house was not completed until May 17, 1978. Frey, at that time, has become disillusioned with his purchase, and refuses to close the deal and demands a refund of his deposit money. Will he win?
- A. No. In the absence of a time is of the essence clause in the agreement of sale, Richards has a reasonable time after April 5, 1978 to close the transaction. The time of the delay would be reasonable.
70. Q. Keeping in mind the printed forms of real estate agreements of sale commonly used, list six of the items of information which should be inserted in the blank spaces.
- A.
1. Name of the parties.
 2. Date of closing.
 3. Description.
 4. Terms of the sale.
 5. Apportionment of taxes, rent, interest, and insurance.
 6. Date of possession.
71. Q. John Steele owns certain real estate clear of any mortgages or unpaid taxes. Name three other types of encumbrances which might cloud the title.
- A.
1. Judgments.
 2. A lease.
 3. A right of way.
72. Q. Can the seller refuse to sign an agreement of sale when the broker insists upon retaining his commission out of the down payment?
- A. Yes. The broker should deposit the money in an escrow account.
73. Q. In arranging for the closing of a real estate deal, enumerate at least ten items that a broker should look after or check.
- A.
1. Have a copy of the agreement of sale at the closing.
 2. See that tax receipts, sewer and water rent receipts are available.
 3. Leases properly assigned to purchaser.
 4. Endorsements for transfer of insurance policies.
 5. Statement from mortgagee as to exact balance due upon mortgage; also receipt for last payment of mortgage interest.
 6. Seller's old deed available for checking description in new deed.
 7. Survey, if available.
 8. Bill of sale for any personal property.
 9. New deed to buyer.
 10. Estimate of closing expense.
 11. Purchaser has certified funds.
 12. Transfer of keys.
74. Q. Harris, owner of certain premises, executed an exclusive listing contract on January 2, 1978, in favor of Stewart, a broker, for a period of three months, with power "for me and in my name to sell and execute contracts of sale" for the property in question. Stewart signed an agreement of sale with Snyder, deal to be closed on Mar. 1, 1978. Harris refused to convey the property, contending that where the principal-agent relationship is limited to time, the agent is without authority to enter into a contract to be performed subsequent to the expiration of the agency

contract. Snyder brought suit for specific performance. Who will win?

- A. Snyder will win. Under the listing contract, Stewart is authorized to execute a binding agreement of sale for the owner, Harris. It is of no consequence that the agreement of sale will be consummated subsequent to the expiration of the listing contract.
- 75. Q. Name five items which are usually adjusted at the closing of a real estate transaction between seller and buyer.
 - A. 1. Taxes.
 - 2. Water rents.
 - 3. Fire insurance premiums.
 - 4. Rents.
 - 5. Interest on mortgage.
- 76. Q. What is meant by proration and what items are usually prorated?
 - A. Proration is the apportionment of certain items as of the date of closing the deal between seller and buyer. The items usually prorated are stated in the preceding answer.
- 77. Q. *A* and *B* sign a binder for the sale of a parcel of real property, with the provision that a formal contract would be signed the next day. The following day *A* refuses to complete the transaction. Can *B* force *A* to go through with the transaction since no formal contract was signed?
 - A. No, since the terms of the contract have not yet been agreed upon. Courts do not make contracts for the parties.
- 78. Q. You have obtained an offer to purchase and have an earnest money receipt signed by the prospective purchaser. The listing is signed by John and Mary Brown. You find that the property is owned by John Brown and Mary Brown, his wife, and Martha Brown, the mother of John Brown. The offer is acceptable to the Browns. Who would you have sign the earnest money receipt?
 - A. John Brown and Mary Brown, his wife, and Martha Brown, the mother.
- 79. Q. In the above case you find upon contact with the owners of the property that Martha Brown, the mother, is away on a trip to California and not readily available. You, therefore, have the earnest money receipt signed by John and Mary Brown. Later, before any further steps are taken, the purchaser decides to cancel the deal and asks for his money back. Are you required to refund the earnest money deposit?
 - A. Yes; the offer has not been accepted by all parties who hold title.
- 80. Q. Suppose in the case above-cited it develops that the mother, Martha Brown, will not sign the deed transferring the property to the prospective purchaser. You have a buyer who is ready, willing, and able but cannot deliver. Can you collect a commission? If so, from whom?
 - A. Yes. You can sue John Brown and Mary Brown.
- 81. Q. The following earnest money receipt was submitted as evidence:

May 10, 1978. Received from John Doe \$80.00 Eighty Dollars earnest money on lot and house number 960 Union Street. Price \$5,000.00 Five Thousand and balance of \$4,920.00 to be paid when papers and title insurance are completed. It is understood this deal would be closed and house vacated on or before June the 10th. All furniture except personal belongings included in this transaction.

Is this document binding upon the parties?

 - A. No; agreement is incomplete as it contemplates a subsequent instrument. In Oregon, omission of city considered fatal; in Pennsylvania, parol (oral) evidence permitted for purpose of giving a more precise description.
- 82. Q. An agreement of sale is made out between Ben Sharp, vendor, and Charles Lang. However, the agreement is signed by Ben Sharp and his wife, Myrtle Sharp. The wife, later, refuses to sign the deed. Can she be compelled to join in the deed?
 - A. Yes. Although her name does not appear in the body of the agreement, she has

- indicated an intention to be bound by the agreement by signing it.
83. Q. If a broker accepts a check for \$1,000 from a buyer, who signs an agreement of sale which is also executed by the seller, and then the buyer stops payment on the check, is the agreement of sale void?
- A. No; the contract came into being when the agreement of sale was signed by both principal parties. The check is incidental or collateral to the contract and has no effect upon its validity.
84. Q. A broker prepared an agreement of sale, which recites a \$1,000 cash deposit received. Actually, he received a 10-day promissory note to his order, which is unpaid at maturity. Upon ascertaining these facts, the seller decides to renounce the deal. Can he do so?
- A. No; the buyer can hold the seller to the agreement as long as the buyer fully performs his part of the deal at the closing.
85. Q. A broker negotiates a real estate deal upon his oral promise that he will find "suitable or comparable" quarters for the seller. He fails to do so. Is he liable on his oral promise which is not contained in the agreement of sale?
- A. Yes; the broker is personally responsible in damages to the seller for his failure to perform his promise.
86. Q. In order to prevent the assignment of an agreement of sale, what clause should be included?
- A. "It is hereby agreed that rights under the within agreement are not assignable."
87. Q. A recorded agreement of sale constitutes a cloud on the title. How may it be removed?
- A. 1. By a deed from vendor to vendee.
2. By a quit claim deed from vendee to vendor or vendor's purchaser.
3. By court decree.
4. By instrument of extinguishment.
88. Q. What is meant by equity when used in connection with real estate transactions?
- A. The margin of value which the owner possesses between the price of the property and the indebtedness against it.
89. Q. A broker, John Steele, negotiates a real estate deal between Henry Cole, seller, and Marvin Hunter, buyer, at \$30,000. The broker obtains a \$2,500 deposit. The agreement contains a "time is of the essence" clause, and is to be closed on March 27, 1978. Due to difficulties in obtaining financing, the settlement date is mutually postponed on several occasions to June 16, 1978. Hunter desires a further continuance and Cole refuses. Hunter demands the \$2,500 deposit. What should the broker do?
- A. Steele should invite a suit and interplead, turning the \$2,500 over to the court, and file a claim for a commission.
90. Q. Identify the following, whether realty or personalty: (1) growing corn, (2) cut logs, (3) growing wheat, (4) growing meadow grass, (5) nursery trees, (6) window shades, (7) electric chandeliers, (8) wall-to-wall carpet, (9) potted plants, (10) gas grate setting in fireplace.
- A. 1-2-3-5-6-9-10 are personalty; 4-7-8 are realty.
91. Q. Where an offer has been mailed to the seller, is there a contract if the seller mails his acceptance, and due to some delay in the mail service, it does not reach the buyer for 15 days?
- A. Yes. The contract came into being when the letter of acceptance was mailed. The mail service is considered the agent of the buyer since he used that medium in communicating the offer.
92. Q. What effect does an alteration to an agreement of sale by the broker or seller, after execution by buyer, have upon the instrument?
- A. The buyer can repudiate the contract. Even if the alteration appears harmless, it may have some effect as to the buyer's desires and prejudice his purposes.
93. Q. What is the difference between cancellation and rescission of a contract of sale?

- A. Cancellation is by mutual consent; rescission is by court action.
94. Q. Does a counter proposition enjoy the same rights of withdrawal (before acceptance) as the original offer to purchase?
 - A. Yes, since a counter proposition constitutes a new offer.
95. Q. What is meant by "earnest money" ?
 - A. The deposit money paid by a prospective purchaser at the time of making his offer to purchase, as evidence of good faith. Also termed "hand money."
96. Q. D. Smith makes a written offer to purchase R. Lincoln's property for \$18,000, with \$1,000 down, \$1,000 in 30 days and balance in 90 days. Lincoln makes a counter proposition to sell for \$19,000 with terms of \$2,000 down and balance in 60 days. This proposition is refused by Smith. Lincoln then agrees to accept Smith's original proposition, but Smith now refuses to deal. Is there a valid contract?
 - A. No. A counter proposition is the same as a rejection. An offer, once rejected, is gone forever, unless the other party is willing to reinstate it.
97. Q. To whose advantage is it to prorate taxes and rent from an income property as of the possession date, rather than the closing date, which came earlier?
 - A. Seller. He will continue to receive rents, which should exceed taxes and expenses.
98. Q. A husband and wife buy a home and take title, as such. Shortly afterwards, the husband leaves and his whereabouts are unknown. The wife cannot afford to keep up the payments. Can she sell the property?
 - A. No; unless she has him declared legally dead after the years specified in the statute.
99. Q. If a broker has good reason to doubt the competency of his owner, due to age and senility, and the owner wishes to sell, what protective steps can the broker take to avoid difficulty with some members of owner's family?
 - A. Have an interested party petition the court to appoint a guardian for the owner and have guardian sign agreement.
100. Q. In selling a home, can the seller take with him the bedroom unit air-conditioner, or does it belong to buyer?
 - A. The unit is considered the personal property of the seller.
101. Q. John Davis, 21 years of age, signs an agreement to purchase a house. He is drafted before the deal is closed. He writes the owner to cancel the deal. Will he succeed?
 - A. Yes; as a practical matter. He is protected by law from any court proceeding on the contract during his military service. Rather than tie up the property indefinitely, the owner's interests would be served by selling the property to another party.
102. Q. An agreement of sale recites that the Friend Real Estate Co. is the broker in the deal and the owner agrees to pay him a commission of 7 per cent. Can Friend maintain a court action for a commission on the strength of this clause?
 - A. Yes; court decisions in Pennsylvania and Virginia have so held.
103. Q. A listing agreement dated Jan. 2, 1978 is given to a broker for 90 days. Will it expire in three months?
 - A. No. It will expire at midnight on the 90th day from Jan. 2.
104. Q. Can a salesman be held liable for earnest money that was turned over to his broker, who dies insolvent?
 - A. No. The salesman is required to turn over all deposit money to his employing broker.
105. Q. Clayton lists property with Moore Realty for \$15,000. He obtains a prospect at \$13,700. Clayton uses the offer of \$13,700 to sell the property to his own prospect at \$14,200. Is the broker entitled to a commission?
 - A. No. This is one of the "risks of the trade."
106. Q. Under what circumstances can a broker represent a buyer?
 - A. There is nothing to prevent a broker from representing a buyer and looking to the *buyer* for a commission. However, he cannot, at the same time, represent the seller, unless both parties know it and agree to it.

107. Q. Should a broker quote any price other than the listing price to a prospect ?
A. No. He can entertain a lower price offered by a prospect and submit it to the owner and thus negotiate.
108. Q. Can there be a verbal exclusive listing contract ?
A. Yes; but it is difficult to prove and very unsatisfactory. In states requiring listings to be in writing, the answer is No.
109. Q. Is an agreement between salesman and broker legal that states that if salesman leaves the broker's employ, he will never again engage in the real estate business in that state?
A. No. Contracts in restraint of trade must be reasonable as to area and as to time.
110. Q. Alice Ritter agrees to sell her residence to James O'Donnell for \$17,000 and agreements, dated June 17, 1977 are signed to that effect. The sale was to be closed on September 12, 1977. On August 14, 1977, O'Donnell agreed to sell the property to Steven Hill for \$18,750 and assigned his agreement with Ritter to Hill. On September 14, 1977, Ritter is willing to deed to O'Donnell, but she is unwilling to do business with Hill. Can Hill enforce O'Donnell's agreement?
A. Yes. An agreement of sale is assignable, unless it contains a clause to the contrary.
111. Q. Saxman signs an agreement to sell vacant ground of 2½ acres to Troop for \$39,000, on June 23, 1977. Deal to be closed on September 11, 1977. The property is in a city zone which permits residential and commercial building use. Troop expects to erect retail store units, since none presently exist in the area. On August 9, 1977, the municipality adopts an ordinance restricting the subject area to residences only. Can Troop rescind the deal because of the zoning change?
A. No. When he signed the contract to purchase the land, he became the equitable owner and as such is bound by the zoning change which affects the property.
112. Q. How could Troop have protected himself in the above case?
A. Troop should have included a clause in the agreement as to the proposed commercial use—that the seller knew that the property was being purchased for that use.
113. Q. Blake enters into an agreement with Cobb on January 2, 1978, to sell a 3-story building for \$55,000. The building has been vacant for three years and in need of major repairs. The deal is to be closed on March 28, 1978. On March 27, 1978, Blake receives a notice from the authorities, citing numerous violations of the housing code and requiring correction immediately. Cobb refuses to close on that account and demands a refund of his deposit money. Will Cobb succeed?
A. No. Cobb became the equitable owner of the agreement on January 2, 1978, and it is his responsibility to make the corrections.
114. Q. Saxton is the owner of a dwelling, which he is selling to Ritter for \$24,500. There is a mortgage debt against the property in the amount of \$16,750, held by Mortgage Finance Co., in the original amount of \$19,500, dated December 6, 1974. Is it necessary to obtain approval of the mortgagee for the sale, since Ritter is taking over the mortgage?
A. No. The property is security for the debt and the seller, Saxton, continues liable for payment of the debt.
115. Q. Is it improper for a broker to loan his commission to the buyer for use as the down payment ?
A. Yes. The practice would be unethical and cast doubts that he has an "able" buyer.
116. Q. In contracting with a builder for the construction of a new home, what precautions can the buyer take to protect his interest?
A. 1. Check contractor's responsibility, credit, and owners for whom he has built homes.
2. Require a performance bond.
3. Obtain mechanic's lien insurance from a title company.
4. Obtain a no-lien contract from the builder and file the same in the proper county office.
5. Make graduated payments to the builder at different intervals as the work pro-

ceeds.

6. If an expensive home, engage an architect to supervise the construction.

117. Q. Whom would you credit and for how many months or fraction thereof, if the seller paid this year's taxes and the settlement was held on April 15?
A. The seller; $8\frac{1}{2}$ months
118. Q. Whom would you credit and for how many months if the taxes were not paid at the settlement on June 20?
A. The buyer; $5\frac{2}{3}$ months
119. Q. Allen agreed to sell his dwelling to Black for \$60,000, subject to an existing mortgage for \$41,500, which Allen assumed and agreed to pay. Before the transaction is closed, Black assigns the purchase contract to Collins for \$65,000. Allen refuses to convey the property to Collins, who sues for specific performance. Will he succeed?
A. No. A creditor has a right to select his debtor. It makes a difference to Allen whether Black assumes the mortgage debt or whether Collins assumes that debt, since Allen is primarily responsible for payment of the mortgage.
120. Q. Henry Dunn and Margaret Dunn have signed an agreement for the sale of their home to Ben Eaton for \$36,000. Eaton has paid \$1,000 to them, as a deposit. The date for settlement was December 31, 1977, but the deal was not closed on that date. Eaton was very evasive as to when he would close. On February 15, 1978, the Dunns received a \$35,000 offer for the same property from Hughes. Should the Dunns accept the Hughes offer and keep Eaton's deposit?
A. If the Dunns accept the Hughes offer and sign an agreement with him, it is quite possible that Eaton would sue for the recovery of the \$1,000 deposit. The Dunns should tender a deed to Eaton and make demand for the purchase price, *before* they enter into an agreement of sale with Hughes.
121. Q. Allen Graham and Mary Stone, who plan to marry on Thanksgiving Day 1977, sign an agreement on September 25, 1977, to purchase the home of Margaret Wilson, a widow, for \$30,000. Allen gives Mrs. Wilson his check for \$750, as a deposit. Closing to be on December 24, 1977. However, both Allen and Mary agree on October 1, 1977 to call off the engagement, and Mary elopes with a former suitor from Brazil a few days later, and moves to Brazil. Can Mrs. Wilson hold Allen Graham responsible on the agreement?
A. Yes, each named purchaser is responsible for the agreement of sale. Mrs. Wilson can keep the \$750 deposit; or she can sue Graham for specific performance of the agreement.
122. Q. An agreement of sale described the property as 3635 Buckner Street, Lots 1 and 2, excluding Triangle in southern part of Montana Industrial Park. The buyer sued for specific performance. Will he succeed?
A. No. The description is too indefinite. There is no way to know how large or how small the Triangle is; whether a major or minor part of the land is to be conveyed.
123. Q. A buyer and seller entered into a written agreement of sale which provided for Title Guaranty Co. to be the escrow holder of the deposit money. Because it was representing an individual claiming title to the same property, it refused to accept the deposit. The seller's attorney told the buyers to deposit the earnest money with the Providence Title Co. In a suit by the buyer for Specific Performance, the seller contends that the change in escrow holder had to be in writing under the Statute of Frauds. Is this contention valid?
A. No. The change was "an incidental condition" and did not change the character or substance of the agreement of sale, and did not have to be in writing.
124. Q. What advantage does a land contract, generally, have over a mortgage?
A. A land contract (contract for deed) usually requires a smaller down payment than if a standard mortgage is used. It contains more remedies available to the seller.
125. Q. What are some attributes (or incidents) of a land contract?
A. Vendee obtains possession of property; pays annual taxes and any assessments; dis-

courages waste; must pay insurance premiums; any payments under the contract are applicable to the purchase price.

True and False

(Answers to this section are on pages 693-694.)

1. Agreements to exchange real estate of equal value need not be in writing. T F
2. If there is a conflict between a printed clause and a written clause in an agreement, the written clause will prevail. T F
3. Available mortgage financing is synonymous with satisfactory financing. T F
4. Where a clause in a land contract provides for foreclosure upon default, advance notice of intent to foreclose must be given. T F
5. If a contract gives the vendee the privilege to purchase the property, it is a unilateral contract. T F
6. Misrepresentation, in law, is the same as fraud. T F
7. An agreement of sale and a contract for sale are the same. T F
8. Earnest money is money paid to close the transaction. T F
9. An agreement of sale is assignable. T F
10. An agreement of sale must always be closed on the date specified in the agreement. T F
11. The purpose of the statute of frauds was to prevent perjury. T F
12. An offer to purchase or an earnest money receipt can have the same effect as an agreement of sale. T F
13. Once an offer to purchase is signed by the buyer, and is signed by the broker, there is an enforceable contract. T F
14. Under the law, every agreement of sale is assignable, even though a clause states it is non-assignable. T F
15. Valuable consideration means that there must be a money consideration. T F
16. The marital status of the parties to an agreement of sale should be stated. T F
17. Every agreement must provide for a monetary consideration, or it is invalid. T F
18. The agreement of a minor to purchase a lot is voidable by the infant. T F
19. A buyer is entitled to the prompt refund of his deposit money if he withdraws his offer before the owner accepts it. T F
20. Hand money means the same as deposit money. T F
21. An offer to purchase is sometimes called a preliminary contract. T F
22. Provided the broker and the buyer agree, it is permissible not to cash the earnest money check until the deal is closed. T F
23. If agreements of sale are signed between the seller and buyer, it is not necessary for the broker to prove that the buyer is ready, able and willing to buy. T F
24. The broker is a third-party creditor beneficiary under an agreement of sale. T F
25. The Court cannot make a contract for the parties. T F
26. The licensee can rely upon the seller's statement that the city will build a public garage next door to the listed property within one year and repeats this to a prospect. T F
27. A purchaser under a land contract usually takes possession of the premises. T F
28. In any real estate transaction, the broker is empowered to sign a contract of sale for the seller. T F
29. A contract for the purchase of real estate for cash may be assigned to another. T F
30. A vendor of real estate is sometimes called the seller. T F
31. Federal Revenue Stamps are not required on an agreement of sale. T F
32. Either the salesman or broker must witness the purchase contract to make it valid. T F
33. The terms "option" and "listing" have the same meaning. T F

34. Title insurance offers protection against loss by fire if property is destroyed before the deal is closed. T F
35. An option contract must be bound by a consideration. T F
36. Conditional land contracts of sale may be assigned. T F
37. Chattel and personal property mean the same thing. T F
38. Deposit money held by a broker must be kept in a fireproof safe. T F
39. The amount of the consideration determines the amount of the earnest money deposit. T F
40. Agreements of sale are subject to the government "freeze" on wages and prices. T F
41. A real estate broker is not required to give the buyer a copy of the closing statement until the deed is recorded. T F
42. The earnest money check should be made payable to broker instead of to seller. T F
43. A broker has authority to acknowledge a purchase agreement since he is a neutral party. T F
44. Where the sole owner is a married woman, the husband's signature is necessary on a contract of sale. T F
45. Land divided into 6 parcels for purpose of sale is known as a subdivision. T F
46. Chattel is another name for the wife's interest in her husband's property. T F
47. Marginal land is land on the edge of a real estate development. T F
48. In an option, the optionor has the right to collect rents on the property during the life of the option. T F
49. A broker should close the deals negotiated by his salesmen. T F
50. The full consideration in any real estate deal must always be in legal tender. T F
51. Any broker can be given a valid power of attorney. T F
52. Contracts to exchange real property need not be in writing to be enforceable. T F
53. A sales agreement must be acknowledged in order to be valid. T F
54. The purchaser cannot rescind the deal and receive his earnest money after the seller has orally approved the deal. T F
55. Real estate sold on "conditional sale contract" or "land contract" can be subject to liens for indebtedness of the seller. T F
56. There is no difference between a void and a voidable contract. T F
57. Any alteration to an executed contract of sale is proper, if it is initialed by all the parties. T F
58. It is important that the broker sign the contract of sale for real estate. T F
59. A sales agreement takes effect from the date it is signed by the seller. T F
60. When a prospect submits to a broker an offer to buy real estate, the prospect cannot withdraw his offer until the owner has had an opportunity to act upon it. T F
61. Both parties to an agreement of sale should receive signed copies of the agreement. T F
62. An agreement of sale to be valid and binding must
 1. be entered into by competent parties. T F
 2. be bound by a consideration. T F
 3. possess mutuality. T F
 4. represent an actual meeting of minds. T F
 5. cover a legal and moral act. T F
 6. be oral. T F
63. A seller under an agreement of sale is known as the vendee. T F
64. One who has taken an option on certain real estate is bound to complete the purchase of property. T F
65. A contract of sale must be accompanied by a deposit to bind the transaction. T F
66. It is essential that a deal be closed on the date specified in the agreement. T F
67. The real estate broker is not a principal party to an agreement of sale. T F
68. An agreement of sale need only be signed by the vendor if the vendee pays a deposit. T F
69. A contract for the exchange of real estate must be in writing. T F

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| 70. There must be at least three persons and a witness to form a binding agreement of sale. | T | F |
| 71. An agreement of sale must be acknowledged by the vendor in order to be binding. | T | F |
| 72. Upon the sale of a piece of property, the seller may remove and take with him: | | |
| 1. the gas range in the kitchen. | T | F |
| 2. a chandelier. | T | F |
| 3. shrubbery bordering a walk. | T | F |
| 4. the hall carpet. | T | F |
| 5. the furnace shovel and poker. | T | F |
| 6. the living room lamp. | T | F |
| 7. the awnings (specially fitted). | T | F |
| 8. gas or electric water heater. | T | F |
| 73. An option should always be signed by the optionee. | T | F |
| 74. A "bill of sale" is the instrument by which title to real estate is conveyed. | T | F |
| 75. Once an agreement of sale is signed, the broker may file a lien for his commission, if not paid. | T | F |
| 76. An attorney-in-fact who signs an agreement of sale must be an attorney at law. | T | F |
| 77. Restrictions as to the use of property in an agreement are encumbrances but are not liens. | T | F |
| 78. Fence posts are personal property. | T | F |
| 79. An "abstract of title" guarantees a clear title. | T | F |
| 80. An equity represents the actual amount of money a purchaser has paid on the property. | T | F |
| 81. An option for which no consideration is given is not enforceable. | T | F |
| 82. A power of attorney to sign an agreement of sale can be given only to duly qualified attorneys at law. | T | F |
| 83. If a prospective purchaser revokes his offer in writing before he has received an accepted copy, signed by the seller, of the offer to purchase, he is entitled to the return of his deposit. | T | F |
| 84. The sale of a property for cash automatically cancels a lease for less than one year. | T | F |
| 85. An oral agreement for the sale of real estate, never reduced to writing, usually cannot be enforced. | T | F |
| 86. An agreement of sale is subject to a zoning change made before the deal is closed. | T | F |
| 87. Where money is actually paid as consideration for an option, the option cannot be assigned by the holder thereof. | T | F |
| 88. A purchaser cannot rescind the deal and get his earnest money back after the broker has told him the seller has accepted. | T | F |
| 89. If the earnest money received by a broker is represented by a note, it is essential that the earnest money receipt show that fact. | T | F |
| 90. A tractor used to till a farm is considered real estate. | T | F |
| 91. In a counter proposition the original offeror becomes an offeree. | T | F |
| 92. If a seller is married, it is the duty of the broker to procure the signature of the seller's husband or wife on the agreement of sale. | T | F |
| 93. If a <i>slight</i> alteration is made in the earnest money receipt after it is signed by the purchaser, this does not invalidate the earnest money receipt. | T | F |
| 94. Permanent buildings on real estate are not personalty. | T | F |
| 95. Once the owner accepts an offer to purchase even on different terms from those contained in the offer, there is a binding contract. | T | F |
| 96. The seller should pay for the continuation of an abstract of title. | T | F |
| 97. The buyer should pay for an attorney's examination of the title. | T | F |
| 98. The sale of land does not include buildings unless expressly stated. | T | F |
| 99. A purchaser buying real estate under a land contract does not usually have title | | |

- to the property. T F
100. A valid written sales contract is binding even if the seller dies. T F
101. An agreement signed on Sunday is enforceable in most states. T F
102. If a person signs a joint and several note with other persons, it is possible that he may become liable for the entire sum of the note. T F
103. A contract of sale must be accompanied by a deposit to bind the transaction. T F
104. "Trade fixtures" means the brands, labels, names of products and the good will of a business. T F
105. There must be an agreement of sale in order to bring action for specific performance. T F
106. When a property is sold, all insurance policies then in effect should be immediately cancelled and new policies written. T F
107. An agreement of sale which requires the purchaser to place his mortgage through the broker who negotiated the deed, is contrary to good ethics. T F
108. One who has taken an option on certain real estate may refuse to complete the purchase of the property. T F
109. If property is held by husband and wife as tenants by the entirety, neither may agree to sell to a third party his or her interest separately. T F
110. The reason for securing a deposit on the sale of real property is to guarantee the broker his commission in the event of a sale. T F
111. Unless expressly released in writing by the vendor, the vendee making an assignment of his interest in a land contract is not released from his liability for the unpaid balance of the contract. T F
112. When a husband is buying real property, it is not necessary for the wife to sign the contract to purchase as the husband's signature binds both of them. T F
113. Apportionment of taxes means prorating taxes between vendor and vendee as of time of closing. T F
114. All rights under an agreement of sale are merged in the subsequent deed. T F
115. The seller is always entitled to keep the earnest money if the buyer defaults without cause. T F
116. A tender of deed and demand for payment of the consideration is necessary in order to place the buyer in default. T F
117. Any item of movable property is called a chattel. T F
118. The closing on a sales agreement should be attended by the broker and not by the salesperson who made the deal. T F
119. A contract for deed and a land installment purchase contract are the same. T F
120. Anticipatory repudiation means that the buyer has not yet made up his mind to complete the deal. T F
121. The statute of frauds relates to unconscionable conduct by public officials. T F
122. A broker, employed by an owner "to sell" his property, has authority to sign a binding agreement for the owner. T F
123. If the buyer notifies the seller that he will not complete the deal, the buyer is entitled to a refund of his deposit money. T F
124. Time in an option is of the essence. T F
125. A deposit money check should be made payable to the salesperson who made the deal, and not to the seller. T F
126. Communication of the acceptance of an offer to purchase is essential to have an enforceable contract. T F
127. A counter-offer is the same as a rejection of the original offer. T F
128. There is a difference between a void and a non-assignable contract. T F
129. When title to real property is transferred, the insurance policies on the property are usually prorated at the closing. T F
130. An owner can refuse to sign a sales agreement for a store unless the buyer is sui juris. T F
131. A listing agreement should provide that deposit money shall be held by the bro-

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| ker in escrow. | T | F |
| 132. Once the seller signs the sales agreement, he cannot later demand that the down payment be turned over to him. | T | F |
| 133. A broker is not liable for any misstatements that he makes because he is not a party of the sales agreement. | T | F |
| 134. A broker is personally responsible, if he promises the buyer that he will procure a mortgage and is unable to do so. | T | F |
| 135. If the sale is contingent upon buyer selling his present home, the broker should include that fact in sales contract. | T | F |
| 136. A broker is within his rights in accepting a "postdated" check even if sales agreement acknowledges cash. | T | F |
| 137. It is acceptable practice for a broker to tell a salesman to attend the closing in his stead, even if the salesman did not negotiate the deal. | T | F |
| 138. The broker attends the closing only to receive the commission or balance due him. | T | F |
| 139. The broker attends the closing to settle any disputes that may arise between seller and buyer. | T | F |
| 140. A broker should not compromise his commission claim in order to resolve a financial dispute between seller and buyer. | T | F |
| 141. A broker cannot collect an earned commission if it is contingent upon a settlement which does not materialize. | T | F |
| 142. An offer-to-buy may be withdrawn after the prospective purchaser and the seller have signed the writing, but before the seller's signed copy is delivered to the buyer. | T | F |
| 143. An habitual drunkard is considered insincere and his contractual capacity limited accordingly. | T | F |
| 144. An oral contract to sell real estate is not void but unenforceable. | T | F |
| 145. If a buyer defaults upon a contract of sale, the broker should turn the entire earnest money deposit over to the seller forthwith. | T | F |
| 146. When the seller and buyer have an irreconcilable dispute as to the terms of a contract of sale and the deal is not closed, the broker should pay the earnest money deposit into court. | T | F |
| 147. A broker should not advise a buyer as to his legal rights where there is a dispute between buyer and seller. | T | F |
| 148. A listing agreement must be signed by both buyer and seller in order to be enforceable. | T | F |
| 149. Hand money, deposit money and earnest money mean the same thing. | T | F |
| 150. The sale of lands does not include buildings unless specifically stated. | T | F |
| 151. Every state has a statute of frauds which requires real estate contracts to be in writing in order to be enforceable. | T | F |
| 152. An acceptance of an offer to purchase after expiration of the time limit of the offer constitutes a "counter-proposition." | T | F |
| 153. Once agreements of sale are signed, the broker can advance a salesperson part of the commission from the earnest money deposit. | T | F |
| 154. Where the buyer withdraws his offer after he has signed a contract of sale, he is liable to the broker for his commission. | T | F |
| 155. A subdivision may consist of five or more lots. | T | F |
| 156. If an agreement of sale does not have a date specified for closing, it is void. | T | F |
| 157. Where the description in the contract of sale gives a street address and number, but no city, it is void. | T | F |
| 158. Where a single woman who is engaged to be married executes a sales contract for her own property, it is necessary to have her fiance join. | T | F |
| 159. An inmate of a home for the aged cannot execute a real estate sales contract without an order of court. | T | F |
| 160. A land purchase contract is generally used to purchase real estate by people of | | |

limited means.	T	F
161. A buyer may rescind an agreement of sale, where the broker, without authority of the seller, has misrepresented the property.	T	F
162. Where the broker knows the property is infested with termites, and fails to disclose that hidden fact to the buyer, the latter can rescind the contract.	T	F
163. Rescission or avoidance of a contract is addressed to the equity side of the court.	T	F
164. A judgment or cognovit note, payable on demand, is the same as a cash earnest money deposit.	T	F
165. At the closing of a real estate, the seller can refuse to accept the buyer's personal check in payment of the consideration price.	T	F
166. A check from the buyer on a building and loan association account is acceptable as an earnest money deposit.	T	F
167. A broker should place a "SOLD" sign on a property when the agreement of sale is signed by both buyer and seller.	T	F
168. The vendee pays the cost of preparing the mortgage or deed of trust papers.	T	F
169. A broker is entitled to a fee for preparing the mortgage papers.	T	F
170. Action by a buyer for specific performance of a contract of sale must be brought within two years from the specified date for performance.	T	F
171. Where the closing date in a sales agreement is more than three months in advance, the broker should insist upon a much larger down payment than usual.	T	F
172. One co-owner can bind his other co-owner by signing an agreement of sale.	T	F
173. If the date in an agreement of sale is missing, the contract is void.	T	F
174. In signing a binder, the purchaser does not obligate himself for a future purchase agreement.	T	F
175. A broker can accept a note as a deposit so long as he is willing to make up the note, if unpaid.	T	F
176. An article can change from personalty to realty and then back to personalty.	T	F
177. Earnest money is money paid to close a real estate transaction.	T	F
178. In a land contract, the purchaser receives a deed and takes possession immediately.	T	F
179. The listing contract is usually the first instrument the buyer signs in purchasing property.	T	F
180. Trade fixtures are usually so affixed to the property that they become part of the property and may not be removed.	T	F
181. Property classed as real property can become personal property.	T	F
182. A thirty-day month is usually used in prorating real estate transactions.	T	F
183. A purchaser usually takes possession under a land contract.	T	F
184. Rescission and cancellation of an agreement are the same.	T	F
185. Wall-to-wall carpeting in a bedroom can be removed by the vendor.	T	F
186. When rugs and drapes are included in the sale of a residence, title to these articles is usually transferred by a chattel mortgage.	T	F
187. A salesman receiving a deposit of earnest money should turn it over to the owner.	T	F
188. A buyer under a land contract who erects improvements may remove the same if he defaults on his contract.	T	F
189. An escrow holder is considered the agent for both the buyer and the seller.	T	F
190. Fixtures, shelves, counters and merchandise in a grocery store do not pass with a transfer of the real property.	T	F
191. A bill of sale is used to convey title to appurtenances.	T	F
192. Hand money paid upon the signing of a contract of sale is called an option.	T	F
193. An agreement of sale is usually more detailed than an offer to purchase.	T	F
194. Under a land contract, the seller retains title until certain stipulated conditions are performed.	T	F
195. "Good will" has value but is never carried as an asset.	T	F
196. The salesman who negotiated the deal should attend the closing in order to col-		

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| lect the commission. | T | F |
| 197. Under an exclusive right to sell listing contract, the broker has authority to sign an agreement of sale for the owner. | T | F |
| 198. The consideration for a deed must always be shown in dollars and cents. | T | F |
| 199. Where deposit money is placed in escrow, the buyer may reclaim it at any time prior to the closing date. | T | F |
| 200. The court will not reform an ambiguous agreement of the parties. | T | F |
| 201. The broker pays for the loan closing costs. | T | F |
| 202. An agreement of sale that requires the buyer to place his fire insurance through the selling broker as long as he owns the property would be considered unethical. | T | F |
| 203. A contract of sale involving financial responsibility is not assignable. | T | F |
| 204. Unexpired premiums on an insurance policy are a debit to the purchaser at time of settlement. | T | F |
| 205. Unpaid city taxes, at date of settlement, are a credit item to the buyer. | T | F |
| 206. In a purchase money mortgage, the buyer is the mortgagee. | T | F |
| 207. The buyer is the vendee in an agreement of sale. | T | F |
| 208. An owner is the optionee in an option. | T | F |
| 209. A contract calling for a March 1, 1978 closing date must be closed on that date or the buyer forfeits his deposit money. | T | F |
| 210. The contractee is the same as the purchaser. | T | F |
| 211. A quit claim deed from vendee to vendor may be used to extinguish an agreement of sale. | T | F |
| 212. A land instrument contract and an option are the same. | T | F |
| 213. It is not necessary for all officers in a corporation to sign an agreement to sell real property. | T | F |
| 214. Ordinarily, an optionee may collect rents on the optioned property, during the life of the option. | T | F |
| 215. A purchaser may rescind the transaction and recover his earnest money even after the seller orally approved the sale. | T | F |
| 216. The optionor can enforce the terms of an option contract by legal action. | T | F |
| 217. \$1 is sufficient consideration to support an option to purchase a property worth \$1,000,000. | T | F |
| 218. Under an installment land purchase contract, the seller upon default can enter judgment for the balance due. | T | F |
| 219. An option is a bilateral contract binding upon both parties. | T | F |
| 220. An agreement of sale controls the contents of the deed. | T | F |
| 221. The first instrument a buyer signs in a real estate transaction is usually the offer to purchase. | T | F |
| 222. Good consideration is always in monetary terms. | T | F |
| 223. In order to make a joint tenancy deed, it is necessary for the agreement of sale to so provide. | T | F |
| 224. An agreement of sale may be enforceable by court action, even if no earnest money deposit is paid. | T | F |
| 225. Acceptance is to an offer what a lighted match is to a charge of gun powder, in that it produces something which cannot be undone or recalled. | T | F |
| 226. An aggrieved purchaser can recover greater damages for fraud than for misrepresentations. | T | F |
| 227. Co-insurance means that husband and wife are co-owners of an insurance policy. | T | F |
| 228. A good way for a broker to obtain listings is to advertise free appraisals. | T | F |
| 229. A licensed broker has the legal right to render an opinion on the validity of title to real estate. | T | F |
| 230. If a sale is contingent upon a buyer selling his present home, this fact should not be included in the agreement of sale. | T | F |
| 231. If the buyer is to obtain a mortgage, the agreement should specify amount, inter- | T | F |

est and term.	T	F
232. A postdated check, which is not paid, voids an executed agreement of sale.	T	F
233. Title insurance protects the buyer if the property is destroyed by fire before the deal is closed.	T	F
234. Gross inadequacy of the consideration price is always ground for rescission of an agreement of sale.	T	F
235. A water softener apparatus is real estate.	T	F
236. Laches and statute of limitations are the same.	T	F
237. An oral agreement, in the presence of two witnesses, accompanied by a hand-shake, will be enforceable.	T	F
238. A judgment note, endorsed by the mortgagee, is legal tender.	T	F
239. A contract for sale of real estate differs from a contract of sale of an automobile in that it must be in writing.	T	F
240. If a deposit money check is returned N S F by the bank, the agreement is void.	T	F
241. Time of the essence clause in an agreement of sale means that it must be signed on the date in the contract.	T	F
242. The real estate broker is an important signatory to the agreement of sale which he negotiates.	T	F
243. An option may be extended by mutual consent, without any additional consideration.	T	F
244. The terms in the agreement of sale control the terms of the deed.	T	F
245. If a dispute arises between seller and buyer after agreements are signed, the broker should recommend that the buyer consult the broker's attorney.	T	F
246. Where a property is under contract by the owner, a widow, and she remarries, a broker can recover his commission, if husband refuses to sign deed.	T	F
247. If liquidated damages are construed to be a forfeiture, they will not be enforced.	T	F
248. A recorded agreement of sale constitutes an encumbrance on title.	T	F
249. Only a court of law can void a recorded agreement of sale.	T	F
250. A deed delivered by the vendor to vendee will, per se, extinguish a recorded agreement of sale between the same parties.	T	F
251. A seller can refuse to accept an assignee of the purchaser for any reason.	T	F
252. The statute of frauds prohibits assignment of agreements of sale.	T	F
253. A penalty clause is the same as a liquidated damage clause.	T	F
254. Courts abhor penalties in agreements of sale.	T	F
255. A broker who is a notary public should not take the acknowledgment of the seller in a deal he negotiated.	T	F
256. Disputes in regard to controversial terms in an agreement should be referred to the Real Estate Commission.	T	F
257. A broker should recommend that the buyer consult an attorney before he signs an agreement of sale.	T	F
258. A builder <i>impliedly</i> warrants that the house he built is habitable.	T	F
259. A buyer can recover only deposit money and expenses where seller fraudulently breaches agreement of sale.	T	F
260. A buyer assumes risk of change in zoning, after agreement of sale is signed.	T	F
261. Threat of a law suit constitutes duress.	T	F
262. A "SOLD" sign is good advertising for the broker.	T	F
263. The consideration price and the earnest money deposit will appear in the same column of the closing statement.	T	F
264. Prorations of taxes, rents and insurance are made from the date the agreement of sale was signed.	T	F
265. The seller is charged with the marginal release of lien.	T	F
266. The buyer pays for preparing deed.	T	F
267. Tax on deed is paid by seller.	T	F
268. Pay-off figure on existing deed of trust is a credit to seller.	T	F
269. Buyer pays for recording deed of trust.	T	F

270. Loan commission is paid by buyer.	T	F
271. Survey charge is paid by seller.	T	F
272. Prorate clause of unpaid taxes is a credit to seller.	T	F
273. Credit report fee is a credit to buyer.	T	F
274. When rugs and draperies are included in a sale of real estate, title is usually transferred by a bill of sale.	T	F
275. The "time is of the essence" clause can be extended verbally by agreement of the parties.	T	F
276. An option is a unilateral contract.	T	F
277. In an offer to purchase, the owner is usually the offeree.	T	F
278. The term of an option can be extended if the optionee pays the optioner something of value.	T	F
279. A suit for specific performance is brought in a court of equity.	T	F
280. An alien citizen is not a competent party to purchase real estate in this country.	T	F
281. A counter proposition is the same as a rejection of the offer.	T	F
282. Permitting several consecutive defaults in payments on a land contract will stop the vendor from insisting upon prompt payment of subsequent payments.	T	F
283. Under an installment land contract, the vendee pays the taxes.	T	F
284. A conditional sales contract is the same as an installment land contract.	T	F
285. A contract for deed is the same as a conditional sales contract.	T	F
286. A land sales contract cannot be recorded.	T	F
287. Rescission of an agreement of sale occurs by operation of law.	T	F
288. Where an agreement of sale is not closed on the date specified for closing, either party can sue for specific performance immediately.	T	F
289. The sale of land does not include chattels.	T	F
290. An agreement of sale must have a seal, in order to be enforceable.	T	F
291. The agreement of sale, to a large extent, makes the law by which the parties are governed.	T	F
292. It is good practice for the vendee of a dwelling to record the agreement of sale.	T	F
293. A recorded agreement of sale, which has not been consummated, places a burden upon the vendor.	T	F
294. A broker who participates in a dual mortgage contract is guilty of a criminal offense.	T	F
295. Placing an earnest money deposit in the hands of a third party is preferable to turning it over to the seller.	T	F
296. In an equity action, a judge hears the case without a jury.	T	F
297. An agreement of sale is a bilateral contract.	T	F
298. Placing deposit money in the hands of an escrow holder is preferable to turning it over to the seller.	T	F
299. Passive concealment of a defect by vendor places duty upon vendor to disclose.	T	F
300. It is legal to provide in an agreement of sale that formal tender of deed and of purchase price are waived.	T	F
301. It is lawful to provide in an agreement of sale that it is not assignable.	T	F
302. The display of numerous "For Sale" signs in a community by brokers indicates an active real estate market.	T	F
303. Life insurance is a good protection, in event the mortgagor dies.	T	F
304. Payment for a termite inspection is the responsibility of the seller.	T	F

Multiple Choice

(Answers to this section are on pages 694-696.)

1. An agreement of sale provided that it was "subject to the buyer's obtaining available financing." The only mortgage that the buyers were able to obtain was from a federal

savings and loan association, at $9\frac{3}{4}\%$ interest for a term of 25 years. The offer of loan also provided "that the stipulated rate of interest may be increased, but only after a 3-month's written notice to borrower." There was also a penalty on payments in excess of 20% of original principal amount, but not on a bona fide sale of the property. The purchasers refused the loan because of these conditions and they were unable to secure a loan elsewhere. Under these circumstances:

- I. the purchasers can recover their deposit.
 - II. the purchasers should be reimbursed for all expenses incurred.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
2. Adams entered into an agreement to purchase Blake's house for \$47,000 on April 14, 1977. No broker was involved. Nothing is said in the agreement as to damages the seller can claim in the event of the buyer's default. A deposit of \$1,000 is paid to Blake by Adams. Adams advised Blake, in writing, on June 16, 1977 that he was not going through with the purchase because he found a house that he liked better. On June 16, 1977, the house was appraised at \$45,000. Blake was unable to sell his house until August 24, 1977, at a price of \$43,700. Under these circumstances:
- (a) Blake can recover \$2,300 as damages.
 - (b) Blake can recover \$500.
 - (c) Blake can only keep the \$1,000 deposit.
 - (d) Blake can recover nothing.
3. Lester listed his home for sale at \$45,000 with Walker, broker. Walker obtained a prospect, Wood, who made an offer of \$38,500, which was refused. A month later he called Walker and told him he would pay \$39,500. Walker told Wood, "If you want the house, you will have to act fast, because we just got an offer of \$41,000." Wood offered \$41,250, which was accepted by Lester. Deposit was \$2,000, which Walker retained as his commission. Later, Wood learned that Walker had no other offer and he seeks to rescind the agreement. Under these circumstances:
- I. Wood can rescind the agreement.
 - II. Wood can recover the \$2,000 retained by Walker.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
4. Where an irreconcilable controversy arises between vendor and vendee, and there is a lengthy delay, it is good practice for the broker holding deposit money to
- (a) place the money in a separate account from this escrow account.
 - (b) turn the money over to a trust company.
 - (c) pay the money into court.
 - (d) turn the money over to the Real Estate Commission's Recovery Fund.
5. Margaret Nolan agreed to purchase a dwelling through Henry Steele, broker, on Saturday, November 12, 1977. She signed an offer to purchase, and gave the broker a check for \$1,000 as a deposit. The next day, another broker persuaded her to look at a house in another development. She looked at it and liked it much better. She called Steele the same day and told him that she had changed her mind and did not want the house. He told her that she was too late, as she had already signed a contract. She stopped payment on her check the next day. Under these circumstances:
- I. the broker is entitled to a commission.
 - II. the agreement of sale is valid.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

6. Flynn entered into an agreement to sell his home to Gallagher for \$42,000 and to take back a purchase money mortgage for \$30,000. Before the deal is closed, Gallagher assigned the agreements to Hogan for \$45,000. Flynn refused to accept Hogan as buyer. Hogan sued Flynn for Specific Performance. Under these circumstances:
- I. Flynn will win.
 - II. Gallagher can recover \$3,000 from Flynn.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
7. Sawyer signed an agreement to purchase Wilson's property on March 21, 1978 for \$46,000, subject to the contingency that he could get a variance of a prohibited use by June 16, 1978. He paid a deposit of \$2,300. On June 1, 1978, the Zoning Board of Appeals denied the petition. The same day, Sawyer took an appeal to Court and notified Wilson, in writing, that he would waive the variance and go through with the deal. Wilson thereupon notified Sawyer that the transaction was terminated and refunded the \$2,300 deposit. Under these circumstances:
- I. Sawyer can compel Wilson to deed the property to him.
 - II. Wilson can compel Sawyer to await the outcome of the appeal.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
8. An agreement of sale, to be enforceable against the owner, can be
- (a) signed by the broker, for the owner, in the owner's absence.
 - (b) signed by the broker, upon owner's verbal authorization.
 - (c) signed by the recorded owner.
 - (d) signed by the broker for the owner, by telephone call from the owner, in the buyer's presence.
9. An agreement of sale is a contract
- (a) between buyer and broker.
 - (b) between seller and broker.
 - (c) between buyer and seller.
 - (d) between seller, buyer and mortgagee.
10. A buyer purchased a new dwelling from a builder. The contract of sale contained a provision that the builder would hold the buyer harmless "against seepage through foundation walls." After the buyer moved in, damage was caused from water coming through a door installed in the foundation wall leading to the rear yard. Under these circumstances, the buyer can
- I. rescind the deal.
 - II. recover expenses to make the door water tight.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
11. Adams sells his home, which is 22 years old, to Baker in June 1977. Baker does not check the furnace nor does Adams make any representations concerning it. In January 1978, the furnace "quits." Under these circumstances:
- I. Baker must pay for a new furnace.
 - II. Baker can collect from Adams the "junk" value of the old furnace.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
12. Where a buyer causelessly defaults, the question whether to forfeit the earnest money

- deposit should be decided by
 - I. the broker.
 - II. the seller.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
13. A statement of anticipated closing costs should be presented before signing of an agreement of sale
 - I. to the buyer.
 - II. to the seller.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
14. Once an agreement of sale is signed, the purchaser has
 - (a) legal title.
 - (b) equitable title.
 - (c) ostensible title.
 - (d) naked title.
15. An earnest money deposit check should be made payable to
 - (a) owner.
 - (b) salesman.
 - (c) broker.
 - (d) mortgagee.
16. Adams executes a contract for the sale of his dwelling to Berger. Thirty-one days before the closing, Adams dies. The result is
 - (a) the deal is cancelled.
 - (b) Berger can compel Adams' executor or heirs to complete the sale.
 - (c) the deal is "in limbo" for one year.
 - (d) the deal is voidable at option of deceased's heirs.
17. A seller of real estate is also known as the
 - (a) vendee.
 - (b) grantor.
 - (c) vendor.
 - (d) grantee.
18. A charge against a property owner to cover the proportionate cost of a street paving is
 - (a) an ad valorem tax.
 - (b) a county tax.
 - (c) an assessment.
 - (d) equitable obligation.
19. Broker "A", in cooperation with Broker "B", made a sale, in which no deposit money was paid. The deal was closed and the buyer gave the broker the full amount due. The broker paid the net proceeds to the seller at the same time. The balance should be
 - (a) deposited in "A's" regular business account.
 - (b) balance due "B" should be paid in cash.
 - (c) the balance should be run through "A's" trust account.
 - (d) "B's" share of commission should be drawn by "A" to "B's" trust account.
20. When legal title is transferred as the result of the sale of real estate, which is encumbered by a trust deed (a mortgage), it is always necessary
 - (a) to obtain the consent of the mortgagee.
 - (b) to pay off the mortgagee.
 - (c) for the grantor to deliver a deed.
 - (d) to completely refinance.
21. Gary, a Nebraska broker, represents to Hill, a former mill worker from Steelton, Pa.,

- that the 200 acre farm he is selling him is in good condition. In fact, it has been cash cropped and the soil is in poor condition. Gary has been selling farms and ranches for 16 years and is a neighbor of the farm's owner. Upon learning the true facts, Hill can
- (a) rescind the deal.
 - (b) can do nothing.
 - (c) keep the farm, but have the court reduce the price.
 - (d) file a complaint with the federal loan board.
22. Rushton enters into a contract for deed of a tract of land in Miami with the owner Alton. The consideration price is \$40,000 and Rushton pays \$5,000 on account. The balance is to be paid in installments of \$300 a month, with interest at 8 per cent. This land contract is
- I. in the nature of a purchase money mortgage.
 - II. in the nature of a warranty in future.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
23. Broker Adams negotiated a transaction between Morgan, seller, and Ziegler, buyer. The agreement of sale provided for earnest money of \$1,500, and that the date for performance, May 1, 1978, was "of the essence of the contract." At the oral request of the buyer, the broker agreed to an extension for performance to May 15, 1978. On May 10, 1978, the seller claimed that the agreement was breached and demanded the \$1,500 deposit.
- (a) The seller is entitled to the \$1,500 deposit.
 - (b) The seller is not entitled to the \$1,500 deposit.
 - (c) The buyer is entitled to a refund of the \$1,500 deposit, less one-half of the broker's commission.
 - (d) The broker is entitled to his commission from the deposit money, and the balance is due the buyer.
24. Williams agreed to sell his residence to Gale for \$40,000. Gale gave Williams a check for \$1,000 which bore a notation "part payment on 2117 Bedford Avenue, Louisville, balance \$39,000." Gale verbally agreed to assume an existing mortgage in the amount of \$26,250. A week later, Gale reneged on the deal and demanded the return of his \$1,000. Under these circumstances:
- I. Williams can keep the \$1,000.
 - II. Williams can compel Gale to complete the deal.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
25. Bennett entered into an agreement of sale to sell his home to Randall. Deal to be closed on June 21, 1978. Time was of the essence and the agreement was subject to the buyer obtaining a mortgage. Randall made a \$1,000 deposit on the purchase price. Since Randall was unable to obtain a mortgage by June 21, 1978, Bennett verbally agreed to extend the time for closing until August 1, 1978. Randall was still unable to obtain a loan by August 1, 1978. Randall demands the return of his \$1,000. Under these circumstances:
- (a) Randall can recover \$1,000.
 - (b) Bennett can keep the \$1,000.
 - (c) Randall can recover \$1,000, less Bennett's expenses.
 - (d) Randall must continue efforts for a reasonable time to obtain financing.
26. Whenever all parties agree to the terms of a real estate contract, there has been
- (a) legality of object.
 - (b) meeting of the minds.
 - (c) reality of consent.

- (d) bilateral consideration.
27. At the time a buyer indicates he is ready to execute an agreement of sale, the broker should obtain a
 - (a) trust deed.
 - (b) negotiable note.
 - (c) deposit.
 - (d) surety.
28. Unless there is a stipulation to the contrary, when real estate under a lease is sold, the lease
 - (a) must be renewed.
 - (b) is immediately cancelled.
 - (c) remains binding on the new owner.
 - (d) becomes a tenancy from month to month.
29. A property is listed with a broker for \$17,500. He receives an offer from "A" at \$15,000 cash, with closing in 90 days; an offer from "B" at \$16,250, subject to the buyer obtaining a mortgage for \$14,000; an offer from "C" at \$16,900, subject to the owner taking back a purchase money mortgage for \$15,000; an offer from "D" for \$14,000, with closing in 30 days. The broker should submit to the owner only
 - (a) the offer of "A."
 - (b) the offer of "B."
 - (c) the offer of "C."
 - (d) the offer of "D."
 - (e) all of the offers.
30. A broker receives a \$5,000 deposit on January 2, 1978 on a \$40,000 property, the deal to be closed on July 3, 1978. He should deposit the money
 - (a) in his checking account.
 - (b) in his interest bearing savings account.
 - (c) in his escrow account.
 - (d) G.M.A.C. notes.
31. A real estate salesman, after receiving a deposit of earnest money, should immediately
 - (a) turn it over to the seller.
 - (b) deposit it in his personal account until the closing.
 - (c) give it to his broker to deposit in a trustee account.
 - (d) turn it over to seller's attorney.
32. Ames, a prospective purchaser, writes a letter to Brown on January 7, 1978, offering to buy certain described real estate owned by Brown for \$20.00. Brown replies promptly by letter stating, "I accept your offer contained in letter of January 7, 1978." Which of the following describes the situation?
 - (a) There is an offer but no acceptance.
 - (b) There is a valid contract between Ames and Brown.
 - (c) There is an acceptance but no offer.
 - (d) There is no contract between the parties.
33. Once the real estate transaction is closed, the closing statement, approved by seller and buyer, should be
 - I. recorded.
 - II. filed with the mortgagee.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
34. Tender of deed to the buyer is not necessary, where
 - I. time is of the essence of the agreement.
 - II. there has been an anticipatory repudiation.
 - (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
35. When an agreement of sale is signed, the seller has
- I. equitable title.
 - II. naked title.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
36. In pro-rating \$200 rent paid for June 1978, agreements were signed on June 15, 1978, and the deal was closed on July 1, 1978, you would
- (a) credit the buyer with \$200.
 - (b) credit the buyer with nothing.
 - (c) charge the seller with \$100 (half).
 - (d) charge the seller with \$200.
37. A copy of the closing statement in a real estate transaction must be
- (a) recorded.
 - (b) kept by the broker for 6 years.
 - (c) given to seller and buyer.
 - (d) given to the mortgagee.
38. Which of the following items should be included in the description of a sales agreement?
- (a) Area of the house and floor plan.
 - (b) Legal description.
 - (c) City, street and number are sufficient.
 - (d) Names of adjoining property owners.
39. A promissory note for 60 days given to a salesman as an earnest money deposit under an agreement of sale
- I. is acceptable with the broker's consent.
 - II. is acceptable with the mortgage lender's approval.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I or II.
40. Adam offers to sell his farm to Baker for \$26,000. Baker makes a counter proposition to buy the farm at \$25,000, provided Adams takes back a purchase money mortgage for \$15,000 at 6% interest, maturity in 15 years. Adams refuses the offer and the same day sells the farm to Clay at \$25,000, taking back a mortgage for \$15,000 at 6% interest, payable in 5 years. The next day Baker accepts the original offer of Adams.
- (a) Baker can compel Adams to convey to him.
 - (b) Baker cannot compel Adams to convey to him.
 - (c) Baker can record his agreement which would be a cloud on the title.
 - (d) Baker can compel Clay to assign his agreement to him.
41. An agreement of sale did not state when the transaction was to be consummated. The agreement is
- (a) void.
 - (b) voidable at option of vendor.
 - (c) voidable at option of vendee.
 - (d) valid and enforceable, within a reasonable time.
42. One who has the right to sign the name of his principal to a contract of sale is
- (a) a special agent.
 - (b) an optionee.
 - (c) an attorney-in-fact.
 - (d) an attorney at law.
43. When real property is sold on an installment contract, and a warranty deed to be deliv-

- ered at a future date, the warranty deed should be placed in the custody of
- (a) the real estate broker.
 - (b) the seller.
 - (c) the buyer.
 - (d) an escrow agent.
44. Adams agreed to sell his home to Bancroft at \$34,000. Bancroft agrees to assume and pay an existing mortgage in the amount of \$22,000; balance in cash. The deal was to be closed on June 16, 1978. On May 15, 1978, Bancroft, in writing, assigns the agreement to Curry, a person of considerable financial standing. Adams refuses to deed the property to Curry, who is willing to assume and pay the existing mortgage. Under these circumstances:
- I. Curry cannot compel Adams to convey the property to him.
 - II. Curry can record his agreement, which would be an effective cloud over the title.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
45. On January 10, 1978, Clay agreed to sell his residence to Dorrance for \$22,500. Dorrance gave Clay a \$500 deposit. Closing date was set for March 21, 1978. Dorrance failed to appear, and the Broker, Haines, finds him very evasive as to when he will close. On June 16, 1978, Haines advises Clay "to forget" about Dorrance and he will try to get him another buyer. On July 3, 1978, Haines obtains a new buyer, Joyce, to whom the property is sold, under an agreement of sale, deal to be closed on August 17, 1978. On July 17, 1978, Dorrance notifies Clay that he was ready to close immediately. Under these facts
- I. Clay is bound to convey the property to Dorrance.
 - II. Joyce can recover damages from Clay.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
46. Adams, on March 21, 1977, obtains an option to purchase Baker's property for \$180,000, for a period of six months. On September 15, 1977, Baker notified Adams that he will exercise the option on September 25, 1977, at the offices of the Tri-State Title Co. Baker appeared at those offices on that date and notified Adams that the option was cancelled. Under these facts
- (a) the option is void.
 - (b) the option is valid, since Baker's appearance at the Title Company impliedly extended the option period.
 - (c) Adams can assert unjust enrichment to enforce the option.
 - (d) the doctrine of nunc pro tunc would apply to give Adams relief.
47. A purchaser, upon signing a contract of sale, has
- (a) equitable title.
 - (b) a fee.
 - (c) a legal title.
 - (d) a reversionary title.
48. Which of the following instruments is not delivered to the buyer at the closing of the sale?
- (a) Deed.
 - (b) Lease.
 - (c) Affidavit of title.
 - (d) Mortgage.
49. Under the usual form agreement of sale, the option to declare the deposit money forfeited belongs to
- (a) seller.

- (b) broker.
 - (c) buyer.
 - (d) Court of Equity.
50. A contract by which the owner agrees with another person that he shall have a right to buy the property at a fixed price within a certain time is called
- (a) an escrow agreement.
 - (b) an exclusive.
 - (c) an option.
 - (d) the first right of refusal.
51. A purchaser's part ownership or interest in a parcel of real estate is called an/a
- (a) equality.
 - (b) equity.
 - (c) inheritance.
 - (d) fee.
52. A property, owned by John Moore and Kay Moore, his wife, is being sold through Jay Stone, broker, to John Kottler. The buyer is giving a \$1,000 judgment note. It should be made payable to
- (a) Jay Stone.
 - (b) Jay Stone agent.
 - (c) John Moore or Kay Moore, his wife.
 - (d) John Moore and Kay Moore, his wife.
53. A contract of sale passes
- (a) an equitable title.
 - (b) a fee simple title.
 - (c) legal title.
 - (d) an inchoate title.
54. To each sales agreement there must be
- (a) an offer and an acceptance.
 - (b) earnest money payment.
 - (c) notarial acknowledgment.
 - (d) a recordation.
55. The tax on a given piece of real property is always determined by multiplying the tax rate by the
- (a) selling price.
 - (b) assessed valuation of the property.
 - (c) appraised valuation of the property.
56. When the contract for the sale of real property includes the sale of certain removable fixtures, such as refrigerators and radiator covers, upon delivery of the deed, the seller should also deliver a
- (a) bill of sale.
 - (b) estoppel certificate.
 - (c) chattel mortgage.
 - (d) satisfaction piece.
57. A broker, receiving a deposit of earnest money, should
- (a) tender it to the owner.
 - (b) keep it, pending final closing of the deal.
 - (c) use it to cover expenses on the sale.
 - (d) deposit it in his trust account.
58. An agreement of sale becomes enforceable when
- I. signed by the buyer.
 - II. signed by the broker, as agent for the seller.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

59. A licensed broker promises a buyer of a commercial property that a new post office will be built next door within six months. The post office is erected elsewhere.
 - I. This is "puffing of goods."
 - II. This constitutes a material misrepresentation.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
60. The statute of frauds was passed to prevent
 - (a) bribery.
 - (b) forgery.
 - (c) perjury.
 - (d) embezzlement.
61. Where the buyer breaches an agreement of sale, the seller, under a recommended form of agreement, can have how many alternative remedies?
 - (a) One.
 - (b) Two.
 - (c) Three.
 - (d) Four.
62. If the seller breaches an agreement of sale because he cannot deliver good title, the buyer can recover
 - (a) deposit money and expenses.
 - (b) punitive damages.
 - (c) exemplary damages.
 - (d) full value of his bargain.
63. A broker negotiates a sale and receives a \$1,000 post dated check (for 30 days) from the buyer. The broker should
 - (a) deposit the check in his escrow account, after the 30 days have expired.
 - (b) keep the check in his office safe until the closing.
 - (c) open a special account in his account procedures.
 - (d) none of these.
64. Broker Wallace negotiates a deal and receives a \$1,000 judgment note payable in 30 days as a deposit. He should
 - (a) notify the prospective FHA mortgagee of this fact.
 - (b) have the buyer notify the prospective mortgagee of this fact.
 - (c) notify the seller that he has a 30 day note.
 - (d) do nothing.
65. An option contract differs from a contract of sale in that
 - (a) the option need not be consummated.
 - (b) the option needs no consideration.
 - (c) the contract of sale is enforceable by either party to it.
 - (d) the contract of sale requires money consideration.
66. A memorandum agreement of sale, dated March 21, 1978 is signed by Cook, seller, and Doran, buyer. No date is specified for performance, but in other respects the memorandum is adequate. Under these circumstances:
 - (a) the agreement is a nudum pactum.
 - (b) the buyer has a reasonable time to close.
 - (c) each party has one year to close.
 - (d) the agreement is ultra vires.
67. On January 3, 1977, Alcorn listed his property for sale with Burroughs at \$35,000. Burroughs obtained a signed offer to purchase from Dubbs on January 24, 1977, at \$31,000, giving a \$1,000 deposit. Alcorn refused the offer. The check is returned to Burroughs. Alcorn, who has been unable to move the property, then signs the Dubbs agreement on April 15, 1977, which is delivered to Dubbs the same day. Dubbs is still looking for a home, but refuses to purchase the property. Under these circumstances:

- I. the agreement of sale, signed by Dubbs and Alcorn, can be enforced by Alcorn.
 - II. Burroughs can collect a commission.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
68. On October 3, 1977, Burns, a broker, negotiated a sale for Chappel at \$48,000 and received a \$400 deposit from the buyer, Glenn. The closing date is November 1, 1977. On October 28, 1977, Glenn notified Burns that he will not be able to close on November 1, 1977, and desires an extension to December 15, 1977. Chappel refused, unless Glenn put up an additional \$1,500 deposit. Glenn refused to increase his earnest money deposit. Under these circumstances:
- I. the deal is cancelled.
 - II. Glenn is entitled to a return of his \$400 deposit.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
69. In most states, an action in Court can be brought upon a formal (under seal) contract within
- (a) five years.
 - (b) six years.
 - (c) ten years.
 - (d) twenty years.
70. An article permanently attached or fastened to real property is considered to be
- (a) personal property.
 - (b) real property.
 - (c) a chattel.
 - (d) private property.
71. John Mason signs a listing contract with Ben Baer Co. to sell his home. Baer, a licensed broker, obtains George Ryan, as a buyer, upon the terms of the listing, and Baer signs the agreement of sale "John Mason, by Ben Baer, Agent." Mason refuses to sign the deed. Ryan can
- (a) obtain a court decree for specific performance against Mason.
 - (b) accept a valid deed signed "John Mason, by Ben Baer, attorney-in-fact."
 - (c) record the agreement of sale to cloud the title.
 - (d) do none of the above.
72. An agreement of sale, dated February 3, 1978, for a home at \$46,000 is signed between Brooks, seller, and Henry Chase, buyer. The seller is to take back a mortgage for \$38,500. At the closing on March 31, 1978, Stone appears with a written assignment of the agreement of sale to him, from Chase, at \$49,500. Stone desires Brooks to deed the property to him at \$49,500. Under these circumstances:
- I. Brooks should deed the property to Stone, at a recited consideration of \$49,500.
 - II. Brooks is entitled to \$3,500 from Chase.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
73. An owner delivers to Smith an option to purchase certain real estate upon Smith's payment of \$10,000 within 30 days; the option recites that it is given in consideration of one dollar, the receipt of which the owner acknowledges; as a matter of fact, *nothing* is paid for the option. Under these circumstances the option is generally
- (a) valid.
 - (b) void.
 - (c) voidable.

- (d) unenforceable.
- 74. A contract of purchase or sale of real property should be signed by
 - (a) the broker.
 - (b) the agent and seller.
 - (c) the seller only.
 - (d) the buyer and seller.
- 75. Tender of deed is unnecessary where
 - (a) time is of the essence.
 - (b) the earnest money is less than 5 per cent.
 - (c) date for performance has expired.
 - (d) there is an anticipatory repudiation by buyer.
- 76. The amount of deposit money is
 - (a) fixed by the real estate license act.
 - (b) agreement of the parties.
 - (c) a minimum of 5 per cent of consideration price.
 - (d) determined by broker.
- 77. "Open housing" means:
 - (a) a model house in a subdivision development.
 - (b) a social party in a new subdivision.
 - (c) celebration by purchaser of a new home.
 - (d) prevention or elimination of discrimination in housing.
- 78. A "binder," accompanied by a deposit, binds the
 - (a) buyer.
 - (b) seller.
 - (c) buyer and seller.
 - (d) neither buyer nor seller.
- 79. The usual procedure is to deposit an earnest money payment
 - (a) the next day after receipt.
 - (b) within five days.
 - (c) within one week.
 - (d) anytime before the closing.
- 80. Where the seller defaults, the deposit money or earnest payment
 - (a) belongs to the broker.
 - (b) should be returned to the buyer.
 - (c) should be placed in an escrow fund.
 - (d) should be paid into court.
- 81. An oral agreement of sale may be enforced where
 - (a) the consideration price is less than \$2,500.
 - (b) there is a down payment of 20 per cent of the consideration.
 - (c) the purchaser has gone into possession, paid part of the purchase price, and made improvements.
 - (d) the broker guarantees performance.
- 82. Breach of an oral agreement of sale gives rise to
 - (a) an action for specific performance.
 - (b) an action for damages, if there is fraud by vendor.
 - (c) a suit by broker against buyer for commission.
 - (d) a suit for a written agreement of sale.
- 83. An agreement of sale recites that the property is being purchased "as is," and as a result of the buyer's inspection, that "the broker, and buyer, are not responsible for any oral representations made." After the closing, the buyer discovers that the basement walls have been recently painted to conceal water leaking into the basement. After a heavy rain, the buyer discovers he now has a wet basement. The buyer can recover damages
 - I. from the broker.
 - II. from the owner.
 - (a) I only.

- (b) II only.
 - (c) both I or II.
 - (d) neither I nor II.
84. Anything that is fastened or attached to real property permanently is considered to be
- (a) personal property.
 - (b) real property.
 - (c) private property.
 - (d) separate property.
85. A sewage disposal bill is an/a
- (a) easement.
 - (b) lien.
 - (c) encumbrance.
 - (d) charge.
86. A contract based on an illegal consideration is
- (a) valid.
 - (b) void.
 - (c) legal.
 - (d) enforceable.
87. The seller of real estate in a land contract is sometimes called the
- (a) vendee.
 - (b) contractor.
 - (c) grantor.
 - (d) lessor.
88. A clause that the broker's commission is payable upon delivery of deed is construed to mean that
- (a) delivery of deed is a condition precedent to his payment.
 - (b) the time when the broker is to be paid.
 - (c) payable when seller signs the deed.
 - (d) none of these.
89. When a purchaser withdraws his offer to purchase before it has been accepted by the seller, the broker should dispose of any deposit money received from the would-be purchaser in the following manner:
- (a) give it to the seller.
 - (b) give it to the buyer.
 - (c) keep it as his commission.
 - (d) pay it into court.
90. Which one of the following is not essential in an agreement of sale?
- (a) A monetary consideration.
 - (b) Meeting of the minds.
 - (c) A forfeiture.
 - (d) Description.
91. The true test for determining whether a fixture is real estate or personalty, is
- (a) shape of the fixture.
 - (b) cost of the fixture.
 - (c) the intention of the owner, when he installed it.
 - (d) the warranty given the owner, at the time of purchase.
92. A broker negotiated and prepared a land sale installment contract for \$40,000, with a \$4,000 initial deposit. The vendor changed his mind about selling. The vendee sued for specific performance. The Court found that the agreement of sale was ambiguous and indefinite, so the suit was dismissed. Under these circumstances:
- I. the broker is entitled to his commission.
 - II. the vendee is entitled to a refund of \$4,000.
- (a) I only.
 - (b) II only.
 - (c) both I and II.

- (d) neither I nor II.
93. Albrecht, in Florida, wrote Sanes, in Georgia, on April 21, 1978, giving him an option to purchase a tract of land in Florida, "... your acceptance to reach me no later than 6:00 P.M., April 26, 1978." Sanes wrote Albrecht on April 24, 1978, accepting the option, but the letter did not reach Albrecht until April 27, 1978. Albrecht now refuses to sell. Decide whether
- I. Sanes can sue and obtain Specific Performance.
 - II. Sanes can sue Albrecht for money damage for breach.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
94. On April 3, 1978, Albert signed a written offer to purchase Bender's home in San Diego, which was listed for sale with Calhoun Realty at \$40,000, and gives Calhoun a certified check for \$2,500. Calhoun reaches Bender in Vancouver, British Columbia. Bender tells Calhoun, "That's fine. Sign my name to the agreement." Calhoun signs the agreement, "Homer F. Bender, by Henry Calhoun, broker," and gives the original copy to Albert. On April 12, 1978, Albert changes his mind about buying the property and demanded a refund of his deposit. Under the law,
- I. Albert is entitled to the refund.
 - II. Calhoun is entitled to a commission from Bender.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
95. An option without a valid consideration is
- (a) valid.
 - (b) void.
 - (c) revocable.
 - (d) enforceable.
96. A payment made to bind a seller to the sale of real estate for a period of time is
- (a) a binder.
 - (b) a bond.
 - (c) an escrow agreement.
 - (d) an option.
97. Deposit money paid upon the signing of an agreement of sale is called
- (a) an option.
 - (b) a recognizance.
 - (c) earnest money.
 - (d) a freehold estate.
98. A note made payable to the order of the broker is
- (a) void.
 - (b) non-negotiable.
 - (c) negotiable.
 - (d) voidable.
99. The description of land sold under an agreement of sale should
- (a) give the house number and street.
 - (b) give a full legal description.
 - (c) describe the improvements.
100. If, upon receipt of an offer to purchase under certain terms, the seller makes a counter offer, the prospective purchaser is
- (a) bound by his original offer.
 - (b) bound to accept the counter offer.
 - (c) bound by the agent's decision.
 - (d) relieved of his original offer.

101. Insurance policy premiums on real property are prorated in escrow from the date the policy was
 - (a) written.
 - (b) recorded.
 - (c) transferred.
 - (d) cancelled.
102. Which of the following instruments would not belong in the same escrow with the others?
 - (a) Mortgage.
 - (b) Escrow instructions.
 - (c) Warranty deed.
 - (d) Deed of trust note.
103. When speaking of "improvements" regarding real estate, we mean
 - (a) fences, wells, drains, roadways, etc.
 - (b) everything affixed to the land.
 - (c) additions to the original house.
104. An owner delivers to a party an option to purchase certain real estate upon payment of \$5,000 within thirty days; the option states that it is given in consideration of good consideration, the receipt of which the owner acknowledges. Under these circumstances, the option is generally
 - (a) valid.
 - (b) void.
 - (c) renewable.
 - (d) not enforceable.
105. A sales agreement which provides that the broker involved should have the exclusive right to place the fire insurance upon the property during the life of the building is
 - (a) allowed only if the broker is also licensed as an insurance agent.
 - (b) contrary to public policy.
 - (c) in the best interests of all.
 - (d) allowed if a copy is filed with the State Insurance Department.
106. It is necessary to set forth in a land contract
 - (a) the date the final payment is due.
 - (b) the purchase price and terms of agreement.
 - (c) amount of commission received by broker.
107. A tract of land described as the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ contains:
 - (a) 20 acres.
 - (b) 10 acres.
 - (c) 5 acres.
 - (d) $2\frac{1}{2}$ acres.
108. At the time of closing a deal, the contractor-seller has not completed all of the landscaping, which will cost no more than \$375. To insure prompt completion, this amount should be
 - (a) held by the broker.
 - (b) withheld by the buyer.
 - (c) placed in escrow.
 - (d) held by the mortgagee.
109. The document which conditionally conveys title to real estate is a
 - (a) mortgage.
 - (b) land installment contract.
 - (c) chattel mortgage.
 - (d) conditional bailment lease.
110. Dorothy Adams entered into a contract for the purchase of a home to be completed by Lemont, builder, on May 1, 1978. The house is not completed by that date and the buyer has "second thoughts" about the deal. Under these circumstances:
 - (a) the buyer can call the deal off.

- (b) the builder has a reasonable time to complete the dwelling.
- (c) the buyer is entitled to reasonable damages for the delay.
- (d) the buyer is entitled to a reduction in the price of the dwelling.
- 111. Hill hires Dale to build a custom house for \$75,000. Before the house is completed, Dale became insolvent, and sub-contractors file liens against the property. What remedy does Hill have?
 - (a) Obtain a quit claim deed from Dale.
 - (b) Bring criminal charges against Dale.
 - (c) Sue the sub-contractors on the basis of unjust enrichment.
 - (d) Hill has no remedy.
- 112. Flynn, broker, negotiates the sale of a house at \$17,000. The agreement recites a down payment of \$1,000; Flynn receives \$300 cash and a \$700 note. The buyer seeks F.H.A. financing. Flynn certifies to the lending institution that he has received a \$1,000 deposit from the buyer. Under these circumstances:
 - I. Flynn is guilty of a criminal act.
 - II. Flynn's license can be revoked.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 113. A land sales contract contained a clause that in event of a sale of the property by the vendee, without the written consent of the vendor, the balance due would be accelerated. If the vendee sells the land contract, without consent of the vendor,
 - (a) balance of debt would be accelerated.
 - (b) seller can repossess the property immediately.
 - (c) the vendee can pay a penalty.
 - (d) the sale is void.
- 114. A financing arrangement by which the buyer does not become the owner of record would be a
 - (a) trust deed.
 - (b) land contract.
 - (c) purchase money mortgage.
 - (d) quit claim deed.
- 115. An option cannot legally be sold or assigned if the original consideration for the option was
 - (a) money.
 - (b) a promissory note.
 - (c) \$1.00.
 - (d) a personal check, returned N.S.F.
- 116. A licensed real estate broker selling a property on which he holds an option must notify the purchaser that he is the
 - (a) optionee.
 - (b) optionor.
 - (c) holder in due course.
 - (d) lessee.
- 117. A contract for sale does not transfer
 - (a) possession.
 - (b) dower.
 - (c) curtesy.
 - (d) title in fee simple.
- 118. To determine the reasonable limit a man of ordinary income might be expected to pay for a home, his annual income is multiplied by
 - (a) 1.
 - (b) $2\frac{1}{2}$.
 - (c) 5.

- (d) 10.
- 119. A bill of sale is used to convey title to
 - (a) an easement.
 - (b) personal property.
 - (c) life estate in real estate.
 - (d) real property.
- 120. A state deed transfer tax should be paid by the
 - (a) seller.
 - (b) buyer.
 - (c) broker.
 - (d) mortgagee.
- 121. A contract which has no force or effect is said to be
 - (a) valid.
 - (b) void.
 - (c) voidable.
 - (d) revoked.
- 122. An item of personal property may be called a
 - (a) freehold.
 - (b) realty.
 - (c) tenure.
 - (d) chattel.
- 123. A statement that property is not termite-infested, if untrue, constitutes
 - (a) puffing of goods.
 - (b) sales talk.
 - (c) misrepresentation.
 - (d) caveat emptor.
- 124. Where a broker accepts a note in lieu of cash, as down payment in a real estate deal, and the note is unpaid, the owner can
 - (a) declare the contract void.
 - (b) bring a criminal action against the buyer.
 - (c) hold the broker responsible.
 - (d) file a complaint with the local credit bureau.
- 125. A purchaser should be notified by the broker who has an option on the property being sold, that he, the broker, is the
 - (a) optionee.
 - (b) optionor.
 - (c) escrowee.
 - (d) lessee.
- 126. A broker should give how many copies of the agreement to purchaser?
 - (a) Two.
 - (b) Four.
 - (c) Three.
 - (d) One.
- 127. After an agreement to purchase has been prepared by the broker and signed by the buyer, the seller insists upon a slightly higher price and slightly different terms. The broker should
 - (a) delete the objectionable terms and insert the new terms, and then have the seller sign the contract.
 - (b) delete the objectionable terms, insert the new terms and have buyer and seller write their initials in margin.
 - (c) prepare a new contract and have buyer and seller sign.
 - (d) have seller sign contract as originally drawn and send a memorandum to buyer as to changes.
- 128. Adams signs an offer to purchase Baker's property at \$7,000. The broker with whom the property is listed at \$7,500 submits the offer to Baker, but Baker wants \$7,350. The

- broker prepares a new contract at \$7,350. Adams refuses to sign. Baker then accepts Adams' offer at \$7,000, but Adams has changed his mind about buying. There is
- (a) a contract
 - (b) no contract.
 - (c) due a commission by the seller to the broker.
 - (d) due a commission by the buyer to the broker.
129. The description of property sold under a contract of sale should
- (a) state the size of lot in terms of feet— 60×150 feet.
 - (b) give the house number and street.
 - (c) give location by approximation.
 - (d) give a full legal description.
130. Land that is divided into five or more parcels of lots for purpose of sale is defined as
- (a) plottage.
 - (b) subdivision.
 - (c) a section.
 - (d) a hereditament.
131. An oral contract for the sale of real property is unenforceable because of
- (a) laws of agency.
 - (b) statute of limitations.
 - (c) statute of frauds.
 - (d) licensing law.
132. Where a broker holds an option on a property and desires to sell the property, he must disclose that he is the
- (a) optionor.
 - (b) trustor.
 - (c) optionee.
 - (d) assignee.
133. Which of the following is an element necessary to establish fraud or misrepresentation?
- (a) The broker knows the truth.
 - (b) The party to whom the statement is made relies upon it to his detriment.
 - (c) The property is worth so much money.
 - (d) The property will resell at a certain price.
134. Under a land contract, who retains legal title until certain specific conditions are fulfilled?
- (a) Vendee.
 - (b) Vendor.
 - (c) Public trustee.
 - (d) Recorder of deeds.
135. "A" conveyed a vacant one acre tract of land to "B." He received
- (a) 43,560 sq. ft.
 - (b) 5,280 sq. ft.
 - (c) 43,650 sq. ft.
 - (d) 22,350 sq. ft.
136. In order to seek specific performance of an agreement of sale, legal action would be brought in a
- (a) civil court.
 - (b) board of arbitration.
 - (c) court of equity.
 - (d) justice of the peace court.
137. The term "sui juris" means
- (a) legal capacity to enter into a contract.
 - (b) trial without a jury.
 - (c) the acknowledgment to a legal instrument.
 - (d) legal right to execute a will.
138. An agreement of sale is not enforceable if

- (a) it is unilateral.
 - (b) there was fraud in its inducement.
 - (c) it is unilateral and bilateral.
139. Marginal real estate is
- (a) yielding farm land.
 - (b) waste land due to erosion, swamps and the like.
 - (c) land which barely repays costs of operation.
 - (d) the end lot in a subdivision.
140. An underground pipeline for irrigation of a farm is
- (a) personalty.
 - (b) realty.
 - (c) a riparian right.
 - (d) an emblement.
141. Insurance policy premiums are prorated in escrow from the date the policy was
- (a) written.
 - (b) recorded.
 - (c) assigned.
 - (d) cancelled.
142. A check is generally called a
- (a) time draft.
 - (b) note payable.
 - (c) negotiable instrument.
 - (d) bill of attainer.
143. An option contract differs from an agreement of sale in that
- (a) the option needs no consideration to support it.
 - (b) the agreement of sale needs no consideration to support it.
 - (c) the option need not be consummated.
 - (d) the option automatically renews itself.
144. Which of the following does not usually appear as debit on the sellers' closing statement?
- (a) Prorating of insurance premium.
 - (b) Prorating of taxes.
 - (c) Interest on mortgage.
 - (d) Cost of preparing deed.
145. An owner may sell the property to a second buyer where the first buyer has indicated
- (a) that he will receive funds after the date fixed for closing.
 - (b) where first buyer complains dwelling is in disrepair.
 - (c) the buyer has declared an anticipatory repudiation.
 - (d) first buyer's credit rating is sub-par.
146. In order to take advantage of a capital gains tax on a real estate purchase and sale, the property must be held for at least
- (a) six months.
 - (b) one year.
 - (c) three months.
 - (d) 30 days.
147. Zone R 1 usually refers to
- (a) hospitals.
 - (b) single family dwellings.
 - (c) light industrial.
 - (d) commercial.
148. If there is ambiguity as to the meaning of any term in an agreement of sale, prepared by a broker, and signed by seller and buyer, it will be construed most strongly against
- (a) broker.
 - (b) seller.
 - (c) buyer.

- (d) lending institution.
- 149. Escrows are opened for protection of
 - (a) broker's commission.
 - (b) public.
 - (c) buyer and seller.
 - (d) mortgagee.
- 150. Which one of the following would not be grounds for voiding an agreement of sale?
 - (a) Fraud.
 - (b) "Puffing of goods."
 - (c) Misrepresentation.
 - (d) Ambiguity.
- 151. Grove received an earnest money deposit check of \$1,500. Which one of the following would be considered co-mingling of funds?
 - (a) Depositing the check in his escrow account.
 - (b) Placing it in his commercial account.
 - (c) Turning it over to the owner.
 - (d) Holding the check until the closing.
- 152. When an option, negotiated by a broker, is not exercised, the money paid for the option belongs to the
 - (a) owner.
 - (b) broker.
 - (c) prospective buyer, as a refund.
 - (d) prospective buyer, to be applied upon another real estate transaction, negotiated by the same broker.
- 153. In which of the following situations may a broker sign an agreement of sale, binding upon the owner?
 - (a) When no actual cash is paid to the owner.
 - (b) When owner takes back a purchase money mortgage for the full consideration price.
 - (c) When the broker receives only a nominal commission.
 - (d) When the broker has verbal authorization.
 - (e) None of these.
- 154. Good real estate practice would dictate and require that the broker whose commission is 7%, obtain an earnest money deposit at the time the agreement of sale is signed, in what amount of the purchase price?
 - (a) 5%
 - (b) 7%
 - (c) 10%
 - (d) 14%
- 155. When a seller accepts an offer to purchase, a salesman should deliver a copy of the signed acceptance to
 - (a) each lending institution solicited for a loan.
 - (b) buyer.
 - (c) escrow agent.
 - (d) employing broker.
- 156. An option to purchase real estate is valid for how many days after the specified date?
 - (a) Thirty days.
 - (b) One month.
 - (c) None.
 - (d) Ten days.
- 157. If a buyer fails to consummate a real estate deal, forfeiture of the deposit money is at the option of the
 - (a) seller.
 - (b) buyer.
 - (c) broker.

- (d) salesman.
- 158. Hill agreed to purchase Dale's home for \$40,000 on April 15, 1978, paying \$500 as a deposit. The agreement provides for an additional deposit of \$2,000 on May 1, 1978, which time is of the essence. Hill failed to make the \$2,000 payment. The broker makes certain alternative recommendations. Which one should the owner follow?
 - (a) Keep the \$500.
 - (b) Sue for \$2,000.
 - (c) Sue for the full purchase price.
 - (d) See an attorney.
- 159. A sales agreement to be enforceable must have
 - (a) signature of wife of married seller.
 - (b) an earnest money deposit.
 - (c) competent parties.
 - (d) an attestation by a disinterested party.
- 160. Albert lists his home with Atkins, a broker, at \$15,000. Adams makes a written offer of \$13,500, with an earnest money deposit of \$500; deal to be closed in 60 days. Albert refuses the offer but states he will take \$14,000, with \$1,000 deposit and deal to be closed in 30 days. This proposition is rejected by Adams. Albert then signs the original offer to purchase on Adams' terms. There is
 - (a) a contract.
 - (b) no contract.
 - (c) a cause for arbitration.
 - (d) an executory contract.
- 161. An installment purchase contract does not give the buyer
 - (a) possession.
 - (b) right to lease the property.
 - (c) title to the property.
 - (d) right to devise the property.
- 162. When real estate is sold on a land contract and a warranty deed to be delivered at a future date, the warranty deed should be placed in the hands of
 - (a) the broker.
 - (b) escrow agent.
 - (c) buyer.
 - (d) no one.
- 163. Where a broker accepts a note, in lieu of cash, as a down payment on a real estate deal and the note is unpaid, the owner can
 - (a) hold the broker responsible.
 - (b) declare the deal void.
 - (c) bring a criminal action against buyer.
 - (d) file a complaint with the Real Estate Commission.
- 164. In fire insurance the most widely used coinsurance clause is
 - (a) 60%.
 - (b) 70%.
 - (c) 80%.
 - (d) 90%.
- 165. After an agreement of sale has been signed by the seller, the broker, at the request of the buyer, inserts the words "at least" before the words "\$150 per month," referring to payments on a purchase money mortgage. The agreement of sale as executed is
 - (a) binding.
 - (b) binding at payments of \$150 per month.
 - (c) invalid.
 - (d) a nudum pactum.
- 166. A land contract is preferable to a mortgage from the standpoint of
 - (a) the seller.
 - (b) the buyer.

- (c) broker.
- (d) mortgagee.
- 167. Under an acceleration clause in a land contract, seller can demand
 - (a) all arrearages due by buyer.
 - (b) arrearages for preceding 60 days only.
 - (c) entire unpaid balance on purchase price.
 - (d) due arrearages plus a percentage penalty.
- 168. The closing statement should be signed by
 - I. the buyer.
 - II. the seller.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 169. Jones signs an agreement to sell his home to Brown for \$27,000, subject to buyer obtaining a \$22,000 mortgage. The mortgage money is available. Brown's wife refuses to sign the mortgage. Jones has an action for performance against
 - (a) the broker.
 - (b) wife.
 - (c) both husband and wife.
 - (d) no one.
- 170. Adams orally agreed to sell 40 acres of land to Bell at \$100 per acre. Bell took possession, paid part of the purchase price, and made some improvements. Later, Adams sued to regain possession.
 - (a) Adams will succeed.
 - (b) Adams will not succeed.
 - (c) Adams will succeed, but must pay for improvements.
 - (d) The oral agreement must be reduced to writing.
- 171. The cost of examination of title for mortgagee and preparation of mortgage papers, at the closing, should be charged to
 - (a) the broker.
 - (b) the mortgagee.
 - (c) the seller.
 - (d) the buyer.
- 172. The cost for title insurance policy should be charged to
 - (a) seller.
 - (b) buyer.
 - (c) divided between seller and buyer.
 - (d) neither seller nor buyer, but to the broker.
- 173. Which one of the following will not terminate the principal-agent relationship by operation of law?
 - (a) Insanity of either principal or agent.
 - (b) Death of either principal or agent.
 - (c) Change of business address of broker.
 - (d) Bankruptcy of either principal or agent.
- 174. Which of the following items at a closing should not be prorated?
 - (a) Sewer assessment.
 - (b) Taxes.
 - (c) Interest on a mortgage.
 - (d) Insurance.
 - (e) Rents.
- 175. An escrow account is terminated by
 - (a) withdrawal of offeree from the deal.
 - (b) withdrawal of offeror from the deal.
 - (c) consummation of the transaction.

- (d) authorization by the broker.
- 176. Strict foreclosure is associated with
 - (a) land contract.
 - (b) mortgage.
 - (c) a conditional sale.
 - (d) offer to purchase.
- 177. Under the usual Vendors-Vendees assumption of risk act, loss by fire usually falls on
 - (a) the vendor.
 - (b) vendee.
 - (c) both vendor and vendee equally.
 - (d) partially on vendor but 80% on vendee.
- 178. In states which have the Uniform Vendor and Purchaser Risk Act, where the property under contract of sale is destroyed by fire before the deal is closed without fault of the buyer, who is not in possession, the assumption of risk falls upon
 - (a) the buyer.
 - (b) the seller.
 - (c) the lending institution committed to a mortgage.
 - (d) a governmental agency.
- 179. Where the agreement provides that the buyer inspected the property and purchased it "as is," but the electrical wiring is defective and dangerous, although not readily apparent, the buyer
 - (a) should hold the broker responsible.
 - (b) should rescind the agreement of sale.
 - (c) is bound by rule of "caveat emptor."
 - (d) should relist the property for sale with the same broker.
- 180. "Caveat emptor" protects the buyer against
 - (a) patent defects.
 - (b) latent defects.
 - (c) a broken stairway.
 - (d) a bulging outside wall.
- 181. The party responsible for the payment of the title closing is determined by
 - (a) agreement of the parties.
 - (b) law.
 - (c) broker.
 - (d) title officer.
- 182. What happens when a deed has been delivered in escrow and the escrow holder dies before the escrow condition has been fulfilled?
 - (a) The deed is void.
 - (b) The deed is valid when the condition is performed.
 - (c) A new deed must be executed by the escrow agent's heirs.
 - (d) A new escrow must be set up.
- 183. An assumption of mortgage clause in an agreement of sale is most advantageous to
 - (a) seller.
 - (b) buyer.
 - (c) mortgagee.
 - (d) broker.
- 184. If an option for more than one year is exercised, the person liable for payment of taxes during the period of the option is
 - (a) the optionor.
 - (b) the optionee.
 - (c) the lessee.
 - (d) the assignee of the option.
- 185. Adams listed his property for sale with Wilkins, a broker, at \$42,000. Wilkins obtained several offers below the listed price and one bona fide offer at \$43,000 from Gordon. Adams, himself, obtained an offer of \$40,000 from Bryant, a member of his country

- club, which he accepted. Gordon has
 - (a) an action for specific performance against Adams.
 - (b) no action against Adams.
 - (c) a cause of action against Wilkins.
 - (d) a cause of action against Bryant.
186. In the above case, Wilkins can collect a commission from
 - (a) Adams.
 - (b) Bryant.
 - (c) Adams and Bryant.
 - (d) neither Adams nor Bryant.
187. Adams writes a letter to Best on March 3, 1978 offering to buy Best's home for \$22,000, "your acceptance to reach me by March 10, 1978." Best receives the offer on March 4, 1978 and writes Adams the same day accepting the offer. Due to a postal strike, the letter does not reach Adams until March 11, 1978. There is
 - (a) a contract.
 - (b) no contract.
 - (c) Best can sue Adams for damages, but not for specific performance.
 - (d) either party can refer the matter for compulsory arbitration.
188. An escrow, once opened, is
 - (a) revocable by either party to it.
 - (b) beyond the control of either party to it.
 - (c) terminates at the expiration of one year.
 - (d) held by the broker, as escrowee.
189. The person who cannot take an acknowledgement is
 - (a) a consul.
 - (b) a notary public.
 - (c) a justice of the peace.
 - (d) an interested party.
190. On March 21, 1978, Don Gaylord, Santa Monica, California, writes to Henry Dolan in San Diego, California, offering to sell his home for \$41,500. The letter is received on March 23, 1978. On March 24, 1978, Dolan writes Gaylord accepting the offer and mails the letter. There is
 - (a) a contract.
 - (b) no contract.
 - (c) no meeting of the minds.
 - (d) a nudum pactum.
191. On March 21, 1978, John Steele, Santa Monica, California, writes to Robert Samuels in Sacramento, California, who had visited the property previously, offering to sell the property for \$41,500. The letter is received on March 23, 1978. On March 24, 1978, Samuels writes Steele accepting the offer. The letter is properly posted, but does not reach Steele until March 28, 1978. Steele signed an agreement to sell the property to Heinz on March 27, 1978. There is
 - (a) an enforceable contract by Samuels as of March 24, 1978.
 - (b) Samuels has an enforceable contract as of March 27, 1978.
 - (c) Samuels has no contract.
 - (d) Samuels now has a contract with Heinz.
192. A vendee becomes an equitable owner of real estate when
 - (a) the deal is consummated.
 - (b) the deed is recorded.
 - (c) the agreement is signed by the vendor.
 - (d) upon delivery of agreement, signed by the vendor, to the vendee.
193. In determining whether a salesperson licensee is an employee of the broker, which one of the following items would be material in declaring such person an employee?
 - (a) Salesperson is assigned listings of property in designated territory.
 - (b) Compensation is received only from commissions.

- (c) All purchase offers must first be submitted to the broker, rather than to the owner.
 - (d) Salesperson uses his own automobile.
194. A broker is permitted to sign an agreement of sale for his owner because
- (a) he is subject to discipline by the Real Estate Commission.
 - (b) authority is given in the license law.
 - (c) by Rule and Regulation of the Commission.
 - (d) verbal authority of the owner.
 - (e) none of these.
195. Where the license law requires broker to give owner a copy of listing contract, which broker fails to do, broker
- (a) cannot collect a commission.
 - (b) is subject to disciplinary action.
 - (c) is deemed untrustworthy.
 - (d) is subject to criminal action.
196. In a real estate transaction, which one of the following instruments is not recorded?
- (a) Deed.
 - (b) Land contract.
 - (c) Mortgage.
 - (d) Purchase money mortgage.
 - (e) Offer to purchase.
197. An agreement of sale, which has not been consummated, but has been recorded, can be removed by
- (a) sale of property to another buyer.
 - (b) release by the broker who prepared the agreement.
 - (c) action to quiet title.
 - (d) order of the Real Estate Commission.
198. Where zoning precludes the intended use of the premises under contract of sale, the objection can be overcome by obtaining
- (a) an order of court.
 - (b) a variance from the zoning adjustment board.
 - (c) a non-conforming use.
 - (d) a hardship permit.
199. Henry, broker, negotiated a sale for Baker to Chase "subject to a mortgage commitment to be obtained by June 6, 1978. If this cannot be arranged, these agreements become null and void, and down payment to be returned to the buyers." A mortgage was not obtained by that date, and Baker notified Henry and Chase that the sales agreement was terminated. However, the mortgage was obtained on June 21, 1978 and Henry notified the parties that the closing would be on June 28, 1978. Under these circumstances:
- I. Chase can enforce the agreement of sale.
 - II. Henry is entitled to a commission from Baker.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
200. Rodgers purchased a tract of land for \$15,000 from Hill, who told him that was what the land cost him. The tract was part of a large land tract, for which Hill paid \$10,000. Rodgers sues to rescind the transaction. Under these circumstances:
- I. Rodgers can rescind the transaction.
 - II. This constitutes "puffing of goods" and Hill must turn over the profit to Rodgers.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
201. Broker Davids negotiated the sale of Calhoun's property to Brooks for \$34,000 on

March 21, 1978. Brooks paid a \$4,000 deposit to Davids, who placed the check in his trust account. On March 28, 1978, Davids remitted \$1,960 to Calhoun, after deducting his 6% commission. Because of a serious flaw in the title. Brooks demanded the refund of his \$4,000 deposit. Under these circumstances:

- I. Brooks can recover from Calhoun.
 - II. Brooks can recover from Davids.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
202. Application for a change in zoning so as to permit intended use by buyer should be made by
- (a) broker.
 - (b) seller.
 - (c) purchaser.
 - (d) broker and purchaser.
203. Where a salesman agrees to sell a buyer's present home in order to purchase a new house, he should
- (a) execute a memorandum to the buyer to that effect.
 - (b) make such promise in the presence of two witnesses.
 - (c) make a memo to the broker by whom he is employed.
 - (d) incorporate a subject to sale clause in the agreement of sale for the new property.
204. The agreement of sale should provide that if the property is damaged or destroyed by fire, where the buyer is not in possession before the deal is consummated, the loss should fall upon
- (a) the seller.
 - (b) the buyer.
 - (c) equally upon buyer and seller.
 - (d) make no reference to that possibility.
205. Where a buyer, after signing a valid agreement of sale, asks the broker for permission to move into the property before the closing, the broker should
- (a) deny permission.
 - (b) grant oral permission.
 - (c) refer him to the owner.
 - (d) have the buyer execute a temporary lease.
206. It is permissible for the broker to give a buyer permission, after the contract of sale is signed, but before the deal is closed, to make minor repairs, do some interior painting or decorating, if
- (a) he has received a substantial earnest money deposit.
 - (b) receives an *additional* earnest money deposit.
 - (c) he feels the property would be improved.
 - (d) he receives permission from the owner.
207. An agreement of sale designates February 1, 1978 as the closing date. On March 1, 1978, the purchaser is ready to close the deal. State whether
- (a) he is too late.
 - (b) he is guilty of laches.
 - (c) the owner can sell the property on February 8, 1978.
 - (d) the buyer can compel the seller to close the deal.
208. Where time is not of the essence of the agreement of sale, the buyer would have how much time to close the deal after the date specified in the agreement?
- (a) One year.
 - (b) 30 days.
 - (c) 90 days.
 - (d) A reasonable time.
209. In determining what is a reasonable time the court would not take into consideration

- which one of the following conditions?
- (a) Type of property.
 - (b) Time of year.
 - (c) Condition of the real estate market.
 - (d) Buyer's salary.
210. A broker's promise to obtain a change in the zoning of a property under agreement to sell is
- (a) binding upon the seller.
 - (b) binding upon the broker.
 - (c) invalid as against public policy.
 - (d) a violation of the license law.
211. It is desirable that *all* listing contracts be in writing for the protection of
- (a) owner and broker.
 - (b) owner.
 - (c) buyer.
 - (d) for the enhancement of real estate prestige.
212. An installment land contract is preferable where
- (a) the property is overly priced.
 - (b) the vendee has only a small amount of cash available.
 - (c) the property will probably be taken by condemnation.
 - (d) the property is in need of considerable repair.
213. "A" builds a custom house for "B", which is completed on May 15, 1977, and "B" takes possession on that date. "B" sells the house to "C" on December 6, 1977. Due to heavy rains, the filled in ground fails to support the house and there is considerable subsidence. "C" can recover for the damage from
- (a) the seller.
 - (b) the builder.
 - (c) the city building inspector.
 - (d) no one.
214. A new house is completed on January 28, 1978, but landscaping, cement walks and some painting are not completed. To insure that all items will be completed by April 15, 1978, the buyer should insist
- (a) on a written memorandum from the builder to that effect.
 - (b) on taking out mechanic's lien insurance.
 - (c) on a promissory note from the builder for the cost of the items.
 - (d) on withholding money from the settlement to insure work will be done by April 15, 1978.
215. A commercial property in Los Angeles is listed with the Central City Realty at \$70,000. Central City communicates with Woods in San Francisco, who is familiar with the property, and agrees to buy the property at that figure. Central City prepares an agreement of sale, which is signed by Downes, the owner, in Los Angeles. Copies are then mailed to Woods for signature, on May 31, 1978. The copies are received by Woods on June 3, 1978. He signs and mails the signed copies to Downes the same day. The copies are received by Downes on June 6, 1978. On June 4, 1978, Downes wired Woods "Offer withdrawn—property not for sale." Under these circumstances:
- I. there is an enforceable contract.
 - II. Central City is entitled to a commission.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
216. An agreement of sale provided it was contingent upon buyer's ability to obtain a \$24,000 loan at $8\frac{1}{4}$ per cent for a 20 year maturity. The buyer was unable to obtain a loan and sued to recover his deposit of \$1,000. Under these circumstances:
- I. it was incumbent upon buyer to show that he was unable to procure a loan after

- diligent effort.
- II. buyer could withdraw from agreement and recover deposit.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
217. A buyer submitted an offer to purchase a dwelling upon condition that vendor install a water cooler. A deposit of \$1,500 accompanied the offer. The seller agreed to the sale, but stated that the buyer should pay for the installation. The buyer orally agreed, but changed his mind. Buyer sued for recovery of \$1,500 deposit. Under these circumstances:
- I. There was no valid contract.
 - II. Buyer is entitled to a refund of \$1,500 deposit.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
218. Clark signed an offer to purchase a dwelling from Grant for \$29,000 on June 20, 1978. It stated, "This offer shall remain open, irrevocably for a period of 5 days." On June 22, 1978, Clark informed Grant that he was withdrawing the offer. The next day, Grant signed Clark's offer to purchase and gave him the signed copy. Under these circumstances:
- I. there is a valid contract.
 - II. Grant may sue for specific performance of the contract.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
219. An agreement of sale provided that July 31, 1978 was of the essence of the agreement for the closing of the deal. On July 29, 1978, the seller orally agreed with the buyer to extend the closing date to August 30, 1978. On August 15, 1978, the seller notified the buyer that the latter had breached the agreement and that he was keeping the \$1,000 earnest money deposit, as liquidated damages. Under these circumstances:
- I. the buyer can recover the \$1,000 deposit.
 - II. the buyer has until August 30, 1978 to consummate the deal.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
220. On August 5, 1978, Boone, buyer, signed an agreement of sale to purchase Jordan's home, and paid a \$500 earnest money deposit, deal to be closed on September 22, 1978. The agreement states that the buyer has examined the home and is purchasing it "as is." Before the closing, Boone has a termite inspection and learns the property is termite infested. Under these circumstances:
- I. Boone can refuse to consummate the deal.
 - II. Boone can close the deal, but Jordan must allow a substantial discount on the purchase price.
 - (a) I only.
 - (b) II only.
 - (c) either I or II.
 - (d) neither I nor II.
221. Aiken verbally agreed to sell his property, consisting of 12½ acres, to Beldin. The latter immediately made efforts to obtain financing and engaged an engineer to lay out lots and necessary streets. Beldin paid Aiken \$1,500 on account of the purchase price of \$10,500. Later, Aiken refused to consummate the deal and Beldin claims part perfor-

mance, which satisfied the Statute of Frauds. Under these circumstances:

- I. Beldin can compel Aiken to deed the property to him, upon payment of the balance of the consideration.
 - II. Beldin can recover his expenses.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
222. Adams bought a home from a builder, who, in the agreement of sale, guaranteed the roof against leakage for a period of one year. During the year, the buyer resold the dwelling to a purchaser, and the roof developed a leak. Under these circumstances:
- I. the second buyer has a cause of action against Adams.
 - II. the second buyer has a cause of action against the builder.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
223. Abbott agreed to sell his residence to Barnes on December 1, 1977 for \$16,000. The deal was to be closed on May 1, 1978. In the interim, steps were taken by the state to condemn the property and the damages awarded for the property was \$18,900. Under these circumstances:
- (a) the increase in price belongs to Barnes.
 - (b) the increase in price belongs to Abbott.
 - (c) the increase in price will be divided between Abbott and Barnes.
 - (d) the increase must be refunded to the state.
224. Brown negotiates a sale for \$18,000. The buyer needs a mortgage of \$17,000 to close. Brown prepares two agreements of sale, one reciting consideration of \$18,000; the second agreement recites \$20,750. Brown has the seller and buyer sign both agreements. The \$20,750 agreement is presented to the First Federal Savings and Loan for the loan. Under these circumstances:
- I. Brown has committed a criminal act.
 - II. Brown's license can be revoked.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
225. In the above case,
- I. the seller is guilty of a criminal act.
 - II. the buyer is guilty of a criminal act.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
226. An agreement of sale, signed by seller and buyer, provided that "in event of default by the buyer, the deposit money of \$500 was to be retained by the seller, as liquidated damages." The buyer defaulted, without good reason. Under these circumstances, the seller could:
- I. sue for specific performance.
 - II. resell the property and sue the buyer for any loss.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
227. An agreement of sale specified May 3, 1978 as the date for consummation. Prior to that date, the broker called the buyer to tell him to bring a cashier check to the closing. The

buyer told him that he would not be ready to close on that date. Neither the seller or the broker heard anything further from the buyer. On June 17, 1978, the broker negotiated a sale of the same property to another buyer. On June 24, 1978, the first buyer notified the broker that he was ready to close his deal. Under these circumstances:

- I. the first buyer could compel the seller to consummate his agreement.
 - II. the seller would be liable to the second buyer for damages.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
228. In the preceding case, the second buyer could:
- I. recover damages from the broker.
 - II. file a complaint against the broker with the Real Estate Commission.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
229. Hart entered into an agreement to sell his home to Benson for \$26,000. Benson paid \$1,000 as an earnest money deposit. Before the deal is closed, Benson's attorney discovers a borough ordinance which provides for widening of an abutting street. Under these circumstances, Benson can:
- I. recover his \$1,000 deposit.
 - II. recover exemplary or punitive damages.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
230. Gage agreed to buy a residence from Hart for \$40,000 and paid \$2,000 earnest money deposit. The property is in Hart's name alone. Hart's wife refused to sign the agreement of sale, unless he bought her an expensive fur coat. Hart acknowledged the agreement. Under these circumstances, Gage can:
- I. compel Hart to place the \$2,000 in the hands of an escrow agent, such as a trust company or abstract company.
 - II. record the agreement of sale immediately.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
231. A buyer signed an agreement to purchase a home for \$16,000, subject to satisfactory financing in the amount of \$14,750. The seller received a \$500 earnest money deposit. The buyer was unable to obtain satisfactory financing. Under these circumstances:
- I. the seller can agree to take back a purchase money mortgage for \$14,750.
 - II. the buyer can recover his \$500 deposit.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
232. John Steele and Henry Steele are unmarried brothers. John agrees to sell his summer cottage on Lake Bedford to Henry for \$3,900. Henry gives John \$250 in cash and they shake hands on the deal, in the presence of two friends. Under these circumstances:
- I. Henry is obligated to pay \$3,650 to John.
 - II. John is obligated to deliver a deed to Henry.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.

- (d) neither I nor II.
233. Young signed an agreement of sale to purchase Bell's residence on December 13, 1977, the deal to be closed on January 3, 1978. Between January 2, 1978, and March 28, 1978, Bell tried to contact Young, but was unsuccessful. On April 3, 1978, Bell sold the property to Hansen, who recorded his deed that same day. On April 21, 1978, Young notified Bell that he was ready to close when he learned the property had been sold to Hansen. Under these circumstances:
- I. Young can compel Hansen to deed the property, upon refunding Hansen's consideration price.
 - II. Young has a valid right to join Bell and Hansen in an action to obtain title to the property.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
234. Assuming in the above case that Hansen closed the deal with Bell on April 25, 1978 and Young recorded his agreement of sale on April 21, 1978,
- I. the deed from Bell to Hansen would be invalid.
 - II. Young could compel Bell to convey the property to him, upon payment of the purchase price.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
235. Adams, a broker, has a listing from Baker for his dwelling, at a \$24,000 price, commission to be 6%. The listing is dated May 15, 1978 and runs for 90 days. Adams obtains a firm offer from Chase at \$23,000 on May 20, 1978. Clay asks and receives an option to buy the listed property from Baker on May 24, 1978, for a five-day period, at \$26,000. Clay then exercises his option. Under these circumstances:
- I. Adams can obtain title to the property from Baker at \$26,000.
 - II. Chase can sue Clay for \$3,000.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
236. Otis entered into an agreement of sale with Camp on March 21, 1978 to sell him a dwelling for \$28,000. Camp gave Otis an earnest money deposit of \$800. The deal was to be closed on April 28, 1978. Camp has failed to close the deal by July 3, 1978, and Otis has an opportunity on that date to sell the property to Edwards, at the same price. Under these circumstances:
- I. Otis should tender a deed to Camp and demand the balance of the purchase price.
 - II. Otis should keep the \$800 as liquidated damages and agree to sell to Edwards.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
237. What type of real estate operation is exempt from displaying an Equal Housing Opportunity poster?
- (a) Broker's place of business.
 - (b) A model house in a development.
 - (c) A real estate subdivision.
 - (d) A private dwelling which is for sale.
238. Broker Thomas negotiates a deal, and receives a \$1,000 note, payable in 30 days, as an earnest money deposit.
- (a) The broker has a duty to inform the prospective F.H.A. mortgagee of this fact.

- (b) The broker has no duty to do so, since there is no privity of contract between the broker and the lender.
 - (c) The broker should ask the buyer-mortgagor to acquaint the mortgagee with this fact.
 - (d) The broker should ask the seller to inform the mortgagee of this fact.
239. Albright sold his farm under a conditional sales contract (land contract), for \$72,000. The dwelling and farm buildings are insured for 70% of the appraised value, or \$28,000. The premium is \$104, per annum, paid by the vendee. A fire occurred two years after the buyer took possession, and caused insurable damage of \$16,750, at which time there was a balance of \$50,000 due on the land contract. Under these circumstances:
- I. the \$16,750 insurance benefits will be applied to the \$50,000 balance due.
 - II. since the insurance premiums were paid by the vendee, the insurance proceeds will be paid to him to improve the farm and purchase of cattle.
 - (a) I only.
 - (b) II only.
 - (c) either I or II.
 - (d) neither I nor II.
240. A purchaser's part ownership in a tract of land is known as
- (a) an equality.
 - (b) a trust.
 - (c) a fee estate.
 - (d) an equity.
241. Holmes sold his residence to Walker on June 16, 1977, possession to be given on June 18, 1977. However, the house that Holmes intends to lease is not available because the owner of that dwelling is building a new home, and it won't be ready for him for 60 days. Holmes refuses to vacate on June 18. Holmes is a
- (a) tenant at sufferance.
 - (b) tenant from month to month.
 - (c) tenant at will.
 - (d) licensee.
242. Linn, a broker, negotiated the sale of the property of Mary King, an elderly widow, to John Holmes on February 14, 1978, for \$22,000, to be closed on April 14, 1978. Linn promised King that he would obtain a comfortable apartment for her at a rental not over \$200 per month. Linn was unable to obtain a satisfactory apartment and King refused to close the transaction. Under these circumstances:
- I. King has an action for damages against Linn.
 - II. Holmes can maintain an action for specific performance against King.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
243. Cole signed an agreement to sell his residence to Porter for \$55,000, subject to Porter obtaining a mortgage for \$41,000, with certain conditions. The prospective mortgagee required a survey. The question arises as to which party should pay the cost of a survey. In this situation:
- I. the buyer should pay for the survey.
 - II. the cost of the survey shall be paid by seller.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
244. Rollins signs an agreement to sell his residence to Sefton on September 6, 1977. The deal is closed on February 15, 1978. The house has been vacant since November 1, 1977. Due to cold weather, the pipes have frozen and caused damage of \$640. Seller

claims buyer has equitable title and must pay for loss. Sefton contends Rollins is liable. Under these circumstances:

- I. buyer is repsonsible for damage.
 - II. seller is responsible for damage.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
245. An agreement of sale between Myers, vendor, and Butler, vendee, for a commercial property, provided, "The risk of loss or damage to the premises by fire until the delivery of deed is assumed by the vendor." Before the transaction was closed, a wind storm caused \$3,750 damages to the premises. Under these circumstances:
- I. Butler can terminate the agreement of sale.
 - II. Butler is entitled to damages for inconvenience and loss of profits.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
246. Stone listed Tyler's property at \$22,500 and obtained a buyer, Young, at \$23,000, who made a \$2,000 earnest money deposit. Stone prepared the agreement of sale, which Tyler signed. When Stone took the agreement to Young, he insisted upon adding a rider clause: "Subject to buyer obtaining a 90% conventional mortgage." Tyler never signed the rider. After delay of six weeks, a mortgage commitment was not forthcoming, and Stone himself sold the property to another buyer at \$22,000. Under these circumstances:
- I. Stone is entitled to a commission.
 - II. Young sues at once for specific performance.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
247. Mr. and Mrs. Charles Kohler signed an agreement to purchase Blake's home on December 4, 1977. They gave the broker, Clark, a check for \$1,000. Blake signed the agreement the same day, which Clark gave to Mr. and Mrs. Kohler that evening. The next day, Sunday, broker Evans persuaded them to look at another property at the same price, which they liked much better. Early Monday morning they stopped payment on the \$1,000 check and notified Clark that they had changed their minds and did not want the first house. Under these circumstances:
- I. Clark, as agent for Blake, can sue on the \$1,000 check given to him by the Kohlers.
 - II. Blake can sue the Kohlers for the consideration price.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
248. The effect of assuming and agreeing to pay an existing mortgage is to
- (a) release the seller from any liability.
 - (b) make the buyer personally responsible.
 - (c) make the mortgage more readily saleable by the mortgagee.
 - (d) make the property more attractive for a re-sale by the buyer.
249. Stone, a broker, negotiated the sale of a commercial property from Fisher to Ellis, subject to a zoning change in use. The Zoning Board of Appeals denied the change. Ellis then notified Fisher that he would take the property "as is." Fisher refused to convey the property, claiming that the denial of a zoning change terminated the agreement, and he tendered a refund of the deposit money. Under these circumstances:
- I. Ellis will succeed in an action against Fisher to convey the property to him.

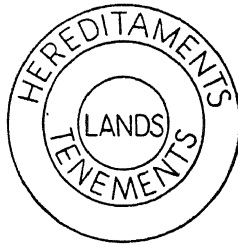
- II. Stone can recover a commission from Fisher.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 250. A buyer signs a purchase agreement on Saturday, July 2, 1977 and gives the broker a check for \$1,000 as a deposit. Over the holiday weekend the buyer changes his mind and notifies the broker on July 5, 1977 that he does not want the property. He stops payment on the check. Under these facts:
 - I. the signed agreement by the buyer effects an enforceable agreement.
 - II. the broker can recover a commission from the buyer.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 251. Jackson, a broker, on March 21, 1978, negotiated the sale of a dwelling owned by Henry Lowell and Jane Lowell, his wife, to Charles Chase and Helen Chase, for \$42,000. The buyers made a deposit of \$1,000, and signed the agreements, as did Henry Lowell. Copies were exchanged. On March 30, 1978, Chase notified Jackson and Lowell that the Chases did not want the property, and demanded the return of the \$1,000. Mrs. Lowell signed a copy of the agreement on March 31, 1978, and delivered it to Chase. Lowell now threatens to sue the Chases, who refuse to close the transaction, for specific performance. Under these circumstances:
 - I. the sellers will succeed.
 - II. the broker can recover his commission from the Chases.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

DEEDS

Real Property and Personalty Distinguished

IT HAS OFTEN BEEN SAID that the purchase of a home is the largest and most important investment that the average person makes in a lifetime. It is a solemn undertaking. The law has recognized this importance and has attached great formality to the transfer of real property.

At the outset, it is important to remember that certain words and phrases in connection with real estate have a technical meaning and a different interpretation than is generally attributed to them by the average layman. The all-inclusive term "property" may be said to be the rights or interest which a person has in lands and chattels to the exclusion of all others. Blackstone defines land as comprehending all things of a permanent substantial nature. *Estate* means quantity of ownership, and *title* is the evidence of ownership. Estate stands for quantity and title refers to quality. Lands are *realty*; chattels are *personalty*. All property of whatever kind and description that is capable of being owned must fall into one of these two classes—realty or personalty. Realty, in turn, includes a twofold classification, *corporeal* realty and *incorporeal* realty. Personalty, likewise, may be divided into two groups, *tangible* (a desk) and *intangible* (copyright). "Corporeal" is derived from the Latin word *corpus*, meaning body.



Corporeal realty, like land, a building, or a tree, can be seen and felt. In other words, real property includes land and almost anything built upon, growing or affixed to the soil. Incorporeal realty includes rights issuing out of, annexed to, or exercisable within land, such as a right of way. It is frequently stated that realty includes lands, tenements, and hereditaments. The relationship of these three classes may be represented by three concentric circles. The smallest circle embraces lands; the next, tenements. Tenements, therefore, include lands and certain things which are realty but which cannot be described as land, such as a building. The largest circle contains whatever may be classed or inherited as realty. Hereditaments embrace lands, tenements, and certain other things, usually of an incorporeal nature, such as a right of way.

A tree growing upon land is real estate. When the tree is severed from the soil and cut into so many feet of boards, the lumber is personalty, and, when the lumber

is fashioned into a dwelling, the lumber becomes real estate again. So too, when clay is part of the soil, it is realty. When it is removed and made into bricks, it becomes personalty. When these bricks are put together to form a building, they become realty again. Thus, many articles may change from realty to personalty and back again. When they are solidly fixed to land or to the structures built upon land, generally they are realty. However, there are many fixtures solidly fastened to buildings, such as heavy machinery bolted to a floor, which remain personalty. Then, there may be articles which have been annexed to the realty and were accidentally or wrongfully removed, which, nevertheless, retain their character of realty. Suppose that a storm blows down a garage or tree. The garage or tree may be no longer connected with the land, but it remains realty until the owner shows an intention to treat it as personalty. The key to a house is such a necessary part of the improvement that it would properly be considered realty.

As a rule, articles that have been brought upon land in order that they may become part of the improvement are not transformed from personalty to realty until they become an integral part of the improvement. For example, lumber and mill-work delivered to a building job are not realty and would be subject to seizure as the contractor's personal property upon a judgement against the contractor, while deposited on an adjoining lot.

Realty and personalty distinguished

Thus, the distinction between realty and personalty is an important one because the law applicable to the two classes of property is radically different. The distinction is also a practical one, readily apparent in the sale of a house when a controversy arises between the interested parties as to whether certain articles, such as stoves, screens, wall mirrors, shrubbery, refrigerator, gas ranges, and other articles, pass with the sale of the house. Certain apparatus which was a constituent part of a rolling mill was held to be realty, although temporarily detached from the mill. The mere fact that the machinery could be unscrewed or otherwise removed without injury to the building would not constitute it personal property. The greater or less facility with which the removal could be accomplished would be too vague a test; the slightest tack or fastening would be sufficient to convert personalty into realty. If the possibility of removing an article without damaging the real estate were the test, the results would also be unsatisfactory. For example, an owner who sold a residence might lift the window shutter off the hinges without any damage to the building, but, in all fairness, it would seem that the shutters are a permanent part of the real estate and should pass with the sale. In the absence of an express stipulation in the agreement, the issue of realty or personalty may be determined finally only by recourse to the courts. The true test for determining whether an article, fixture, or piece of equipment or machinery is realty or personalty is the *intention* with which the article is affixed to the property, considered in the light of what is fair and reasonable under all the surrounding circumstances. In other words, each case must stand upon its own particular facts, but the main feature is "the intention" as disclosed by words or conduct of the owner when the installation was made, with due regard given to existing custom, if established. Custom plays an important part in determining what articles are realty and which are personalty. Most persons would be greatly surprised if the seller should detach and remove the chandeliers and radiators in a house. We have come to look upon such fixtures as an essential part of the premises, as are doors and windows. It is a broker's obligation to

prepare a comprehensive and satisfactory agreement defining what shall pass with the conveyance of the premises.

Chattels which are distinctly furniture, as distinguished from improvements, and not particularly fitted or fastened to the property with which they are used, remain personalty. Chattels which, although physically connected with the real estate, are so affixed as to be removable without destroying or materially injuring the fixtures or the property to which they are annexed become part of the realty or retain their character as personalty, depending upon the intention of the parties at the time of the annexation. Chattels which are so annexed to the property that they cannot be removed without material injury to the real estate or to themselves are realty even if there is an expressed intention that they should be considered personalty.

In *Farmers & Merchants Bank v. Sawyer*, 163 So. 657 (Ala. 1937), a bathtub, built-in ironing board and lights were held to be fixtures by reason of their mode of annexation to the realty and were not removable by the seller.

In an apartment building, refrigerators, wall-to-wall carpet, and gas or electric ranges in the various units, are considered part of the realty. A sprinkler system in a factory or commercial structure is real estate.

Test to be applied

Court decisions are uniform in applying certain rules to determine the real or personal character of a fixture. They are:

1. Annexation to the realty; a built-in television set would be considered realty; likewise a roof antenna, a sprinkler system in a commercial building.
2. Adaptability or application, as affixed to the use for which the real estate is appropriated; a theatre sign or marquee, specially constructed storm doors or screens for a particular dwelling; a built-in organ in a church.
3. An intention of the party to make the chattel a permanent part of the freehold; lighting fixtures, radiators, laundry tubs.

A trailer, or mobile home, connected to a lot with which it is sold as a "package" would be considered realty, and subject to taxation, as such. By being annexed to the land, the vehicle becomes real estate, although detached from the land, it would be personal.

Transfer of Title to Real Estate

TITLE TO real estate, the evidence of ownership, passes generally in several ways: (1) by purchase, through delivery of deed and (2) by descent, through a will or by inheritance. As will be seen later, title may also be obtained (3) through adverse possession and (4) by eminent domain.

Origin of title

It is of fundamental importance to know that the extent of the right which a person acquires in property can be no greater than that enjoyed by his predecessor in title. This means that one cannot buy more from the former owner than the latter had, despite the fact that he may give what purports to be a valid deed. If an owner gives a deed for a tract of land 110 feet in depth, but he only owned 100 feet, it follows that the buyer obtains title only to 100 feet. Thus, in order to determine the exact extent of the rights of a present owner of property, a diligent and thorough search must be made in order to ascertain the rights which were handed down to him through a long line of former owners, and in many cases, it is necessary to trace the title back to its origin so as to ascertain the extent of the original grant which was made. This general principle, of course, is subject to certain modifications, for many laws have been passed, intended to cure or remedy defects in titles produced through carelessness or blunders. Title to a property has a very long life, extending back to the beginning of private ownership. Technically, titles emanated from a sovereign power or government, the exact source varying in the different sections of the country. For example, in New Jersey and Delaware, it is Lord Baltimore; in New York, it is the Duke of York, or his successor, the State of New York; in Pennsylvania, it is William Penn. In Kansas and Nebraska, it is the United States government, which secured title to the Great Western Domain through grants made by the thirteen original states, and subsequent negotiations with France for the purchase of the Louisiana Territory. A prudent purchaser of land, anywhere, will insist upon an Abstract of Title and opinion of title, or have the title insured by a title company, in order to obtain protection as to the quality of title to the land purchased.

Quality of title

The grantee is entitled to that quality of title which will enable him to sell the property without objection or difficulty. Good title is said to be such title, free from encumbrances or clouds, which a court would compel a purchaser to accept. The doctrine of "doubtful title" is that a purchaser of land is entitled to a title that will not get him involved in litigation: *Baldwin v. Anderson*, 161 N.W. 2d 553 (Wis. 1968).

Formality of title transfer—by deed

The law has always regarded the transfer of real estate as one of the most solemn acts in which an individual can engage and thus a great deal of formality attends its

transfer. In the early days of land tenure, transfer was accomplished by "livery of seizin," which, literally, means transfer of possession. The seller and buyer would go upon the land in question and there, in the presence of witnesses, the seller would take a clod of turf or a twig from a tree and hand it over to the buyer as a symbol or token of the transfer. The transfer was then made a matter of record by having the scrivener (the person in the community who could write) write out the transfer upon parchment or other durable matter, in order to prevent erasure or alteration; the scrivener wrote the name of the grantor (seller), and the latter affixed his personal seal. With the development of education, the emphasis has shifted, so that the signature is the all-important feature in the execution of a deed and the seal only incidental, usually printed upon the deed form. Although a deed is a contract between the grantor and grantee (buyer), it is not necessary for the latter to sign it, and, in fact, this would be unusual. The acceptance of the deed consummates the contract. It should be kept in mind that a deed is a contract and, therefore, all the essential elements of a valid contract must be present. It is also necessary to have special formality—that is, the deed must be in writing. There can be no such thing as an *oral* transfer of real estate. Under Spanish law, an oral deed, coupled with transfer of possession, was effective to pass title. A deed represents the formal completion of an agreement of sale previously executed by the parties.

In construing a deed, every attempt should be made to carry out the intent of the grantor, and *substance* rather than *form* should control: *Shulansky v. Michaels*, 484 P. 2d 14 (Ariz. App. 1971).

The primary rule in interpreting a deed is that it be taken as a whole, with the intention of the grantor controlling: *Guido v. Baldwin*, 360 N.E. 2d 842 (Ind. App. 1977). However, ambiguous reservations are construed against the grantor: *Besing v. Ohio Valley Coal Co., Inc. of Kentucky*, 293 N.E. 2d 510 (Ind. App. 1973); *Pfeffer v. Lebanon Land Dev. Co.*, 360 N.E. 2d 1115 (Ill. App. 1977).

Where there is ambiguity of construction of a deed, it should be construed most favorably to the grantee, since the grantor prepared it: *Jones v. Johnson*, 307 N.E. 2d 222 (Ill. App. 1974).

Deeds are classified as warranty deed, bargain and sale deed and quit claim deed. There is very little real difference between a warranty deed and a bargain and sale deed. It is a distinction without any real difference. A warranty deed conveys title to real estate to the same extent as a bargain and sale deed; and the latter carries similar warranties as in a warranty deed.

Quit claim deed

A *quit claim* deed is used to clear clouds upon the title as in the case of a recorded agreement of sale or the release of a life estate or a contingent remainder. The grantee in the quit claim deed may already have or may claim a complete or partial title to the premises and the grantor has a *possible* interest that might constitute a cloud upon the title. A deed of *confirmation* is similar, in effect, to a quit claim deed. The operative words are "remise, release, and quit claim." The warranty is omitted entirely, and the grantor forever quits whatever interest he might have in the property. A wife who has not joined in the bargain and sale deed, may subsequently sign a quit claim deed barring her potential dower right in the property. A quit claim deed conveys only such interest as the grantor is possessed at the time of the conveyance: *Chatham Amusement Co. v. Perry*, 216 Ga. 445 (1961).

A quit claim deed may be used to extinguish a recorded agreement of sale. The vendee (purchaser) would be the grantor in this deed.

Deeds—definition

Transfer of title by *deed* is the most common method of passing title to real estate. Blackstone defines a deed as a “writing or instrument under seal, containing some contract of agreement, and which has been delivered by the parties.” Thus the word “deed,” in a legal sense, may mean any sealed contract or instrument, such as a lease, mortgage, or bond. The popular sense restricts it to a conveyance of property. A deed may then be defined as a writing by which lands, tenements, and hereditaments are conveyed, which writing is signed, sealed, and delivered by the parties. The ordinary common warranty deed contains a number of clauses that have an important bearing upon the rights of the parties. A present day definition of a deed is of a similar tenor: *Williams v. Board of Education*, 201 S.E. 2d 889 (N.C. 1974).

For purposes of study, a deed may be divided into three component parts—the Premises, the Habendum and the Testimonium. The Premises includes the date, parties, consideration, granting clause, description, recital and appurtenances. The Habendum et Tenendum (to have and to hold clause) includes this clause and the Under and Subject or Mortgage clause. The Testimonium clause includes the Warranty and “In Witness Whereof,” etc. This outline is valuable to remember so that a person may check a deed to ascertain that all clauses are included and, also, as an aid in preparing a proper deed. Now for a fuller discussion of the various parts.

Date

The date usually comes first but is not essential to the validity of a deed. When inserted, it indicates the time when the title passed; that is, when the deed was delivered; but it is only *prima facie* evidence, and the presumption of time of delivery may be rebutted by convincing testimony to the contrary. A deed dated on Sunday but delivered on a week day is good. A deed without a date or a date subsequent to that in the acknowledgment affidavit would not be void, but the party accepting the deed would have the burden, in case of litigation, of proving when the deed was actually delivered. If the date in the acknowledgment antedates the date in the deed, a technical examiner may require a new acknowledgment and re-recording. If the grantor is dead or cannot be located, difficulty in this connection is readily apparent. Great care should therefore be exercised to examine the dates in the deed in order to avoid difficulty at a later date. If the date is inserted, the grantee would have the presumption in his favor that the deed was delivered on the date specified and the burden would then be upon the opponent of the deed to prove otherwise.

Parties

The names and residences of the parties to the deed immediately follow the date. The party selling the property is known as the *grantor*; the purchaser of the property is known as the *grantee*. Any uncertainty as to the persons intended would render the deed void. Where the parties have a middle initial, it should be inserted. A deed must be made to some certain person or else it is void. A deed to a fictitious or unincorporated community or corporation which has no legal existence, is void. Thus a deed to the Ajax Printing Company, which is a partnership consisting of two members, is void. The deed should have been made in the names of the two partners. A deed “to the employers of the school at Plum Creek” would also be invalid. Where a corporation is a party to a deed, a slight mistake in setting out its name will not vitiate the deed, if it is clearly apparent from the face of it that one certain

corporation was intended. Thus, a deed written in the name of Boulevard Land and Development Company, Inc., would be upheld where the name of the corporation actually was Boulevard Land Development Company, Inc. However, in the case of *Alton Evening Telegraph v. Doak*, 296 N.E. 2d 605 (Ill. 1973), the word "Co." was omitted in the name. The court held that the action failed. Likewise, in *Arrow Ambulance v. Davis*, 306 N.E. 2d (Ill. 1974), failure to include "Inc." in the action was held fatal.

Deed of bargain and sale—consideration

A deed of bargain and sale, which is the instrument adopted in most states to transfer real estate, requires consideration for the deed, although it need not be necessarily expressed. Consideration in the deed may be either good or valuable. A good consideration proceeds from love and affection or the like, and has no pecuniary measure of value. A valuable consideration is money or its equivalent, anything capable of being measured by a monetary standard. The practice of inserting a dollar as consideration is sufficient for the requirements of the law. Courts do not inquire into the adequacy of the consideration. The slightest consideration is sufficient to support the most onerous obligation. Thus a \$1.00 consideration will support the transfer of a property worth \$1,000,000. If the title is being transferred to a relative without any cash consideration, as from father to son, the deed should recite for "\$1.00 and other good consideration." A deed made by an insolvent owner to a close relative or friend with the intent to disturb, delay, hinder or defraud creditors is void against a creditor: *Patterson v. Hopkins*, 371 A. 2d 1378 (Pa. Super. 1977).

Under statutes dealing with transfer of real estate by an insolvent debtor, or made with actual intent to defraud, the burden of proof is initially upon the one seeking to set aside the conveyance: *Sparkman & McLean Co. v. Derber*, 481 P. 2d 585 (Wash. App. 1971); *Isabella Bank & Trust Co. v. Pappas*, 261 N.W. 2d 558 (Mich. App. 1977). Deeds from fiduciaries, such as trust companies, should recite the true consideration price rather than a nominal consideration. An error in stating the true amount of consideration will not affect the validity of the deed.

In consideration of support

A support deed, as the term implies, is when the grantor deeds real estate to the grantee in *consideration* of the grantee's agreement "to provide care, shelter, and maintenance for and during the term of the natural life of the grantor": *Shook v. Bergstrosser*, 51 A. 2d 681 (Pa. 1946). This clause in the deed is important.

If the grantee merely makes a verbal promise, and the promise is not kept, the grantor is in serious difficulties.

An aged parent, in return for support and shelter from a son, may deed the home to him. Later on, differences arise between the two, and, sad to relate, the son orders the father from the home. Soon thereafter, the son sells the property to a bona fide purchaser. Unless the deed from father to son recites that the conveyance to the son was made in consideration of support during the father's life time, the conveyance to the third party will be upheld: *Wood v. Swift*, 428 S.W. 2d 77 (Ark. 1968); *Kinney v. Kinney*, 150 So. 2d 671 (La. 1963); *Mitchell et al. v. Wilcox et al.*, 139 N.W. 2d 203 (Neb. 1966).

Where a parent has deeded a property to a child, other members of the family will often challenge its validity on the grounds that undue influence was exercised.

Where the deed recites a consideration of maintenance and support and the deed is contested later on the grounds of *failure* of consideration, the circumstances will be carefully scrutinized to ascertain whether the parent was imposed upon because of age, poor health or fraud, in making the deed.

The relationship of child to parent, does not, per se, raise a presumption of undue influence, duress, or fraud: *Prentice v. Cox*, 547 S.W. 2d. 744 (Ark. 1977). "Love and affection" is sufficient consideration for a deed so far as the *immediate* parties are concerned, but it is not a "fair consideration" where the conveyance of real property is made to delay, defraud, or hinder creditors of the grantor: *Jahner v. Jacob*, 252 N.W. 2d. 1 (N.D. 1977).

A niece's deception to her uncle that she and her cohabitor were married is sufficient ground for cancellation of deed, which conveyed a life estate to them, as husband and wife: *Harrell v. Branson*, 334 So. 2d 604 (Fla. App. 1977). In a deed from a 94-year-old uncle to his nephew, a presumption arises that the deed was invalid and burden of overcoming presumption was upon the nephew: *Gross, Adm., etc. v. Allen*, 345 So. 2d 1315 (Miss. 1977).

If a parent conveys his property to a child in consideration of the child's promise to support the parent, and the child fails to carry out his promise, then equity will presume that the child had a fraudulent intent, and will allow the parent to rescind the deed transfer: *Kendall v. Kendall*, 360 N.E. 2d. 1242 (Ill. App. 1977).

Many states and some municipalities and/or school districts require a transfer tax. Usually, the seller absorbs one transfer tax, the state transfer tax, and buyer pays the local transfer tax. This is especially true where the state and local tax are in the same amount; for example, one per cent of the consideration by each governing body.

Granting clause or operative words

The words used in the deed that transfer the estate from the grantor to the grantee constitute the granting clause and are termed the "operative words." These words are generally "grant and convey" or "grant, bargain, and sell." They usually precede the description but may be placed in any part of the deed. The necessity for technical words is no longer felt, and any words indicating an intention to convey will operate to transfer title. Following the grant and immediately preceding the description of the property are the words of limitation denoting the quantity of estate intended to be granted. The words ordinarily employed to pass a fee simple title are "heirs and assigns." A fee simple estate is the greatest estate which may be held in property, and at common law the words "heirs and assigns" were absolutely essential to pass a fee. Without the word "heirs" only an estate for life passes. It would not suffice to say that the "grantee is to have and to hold forever" or "to the grantee and his assigns forever," for this does not mean that the issue of the grantee acquire any vested interest in the land. The word "heirs" is said to be a word of *limitation*, rather than a word of *purchase*, and indicates a complete title of perpetual duration with power to sell to anybody; it does not give the issue or heirs of the grantee any rights in the property after the owner's death. Today, the operative words in a deed, "grant and convey," or either of them will generally be held to be effective to convey a fee simple title if the grantor had such title.

Fee simple title

A fee simple title is the highest and most complete ownership or enjoyment in real estate. It is sometimes referred to as ownership in fee or fee absolute. Where such owner executes a lease, he does not part with title. The person to whom the

property is leased acquires a lesser, or leasehold estate. Likewise, if a person acquires a property for life, by deed, or will, he does not become a fee simple owner, but rather the owner of a transitory life estate, which ceases at his death. The person who succeeds to the title when the life estate terminates is known as the remainderman.

A property is conveyed to Mary Hardy for and during the term of her natural life and then the remainder to David Hardy, in fee simple. Upon Mary's death, title to the property would, of course, vest in David Hardy.

Description

The purpose of the description in a deed is to identify sufficiently the land to be conveyed, and no deed will be operative which does not contain a description sufficient for an exact identification of the property. The description need not necessarily be technically accurate but must be sufficiently precise to enable a surveyor to locate the boundaries. If the description is not sufficiently full, the deed will fail; verbal testimony will not be admitted to supply the deficiency unless such deficiency is the result of fraud, accident, or mistake, in which case the courts permit a reformation of the deed description.

A deed description calling for "about 8 acres to a lake" and "about 6 acres to a stake at road," without identifying stakes or giving beginning and ending points, was so indefinite as to be void: *Grand Lodge of Independent Order of Odd Fellows v. City of Thomasville*, 226 Ga. 4 (1970). The words "more or less" raise a presumption of sale by the acre: *Witmer v. Bloom* 288 A. 2d 323 (Md. App. 1972); *Allen v. Youngblood*, 200 S.E. 2d 758 (Ga. 1973).

In the case of *Sabine Investment Co. v. Stratton*, 549 S.W. 2d 247 (Tex. App. 1977), the vendee sued for specific performance upon a sales agreement, which described the tract as "Lot 5, in the Donald McDonald Survey, Subdivision in Sabine County, Texas, according to Plat recorded in the County Clerk's Office of such county, or legal description as follows: 3.7 acres more or less." The County Clerk's Office showed no such recorded plat. The description was held wholly inadequate and specific performance was refused.

Property description in deeds should be liberally construed to sustain rather than defeat a conveyance. In the Louisiana case of *Placed Oil Co. v. Young*, 246 So. 2d 306 (1971), the grantor conveyed "acres in S.W. corner of N.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ " of designated section, which was the same tract acquired by grantor under a partition agreement; the court held the description valid.

A real estate contract describing land only as "all that tract of Land Lot 112 of the 5th Dist, of Clayton County, Ga., being 36 acres on New Hope Road," was void and unenforceable for uncertainty: *Wallace v. Adamson*, 201 S.E. 2d 479 (Ga. 1973).

A call for established corner prevails over a call for distance: *Jordan v. Tinnin*, 342 So. 2d. 748 (Ala. 1977).

Parol evidence rule

The parol evidence rule generally applies. The rule is that verbal testimony cannot be introduced to vary, contradict, add to, or subtract from a written instrument, or to change its legal import, unless fraud, accident, or mistake is pleaded. However, should the deed refer to some other instrument, such as a previous deed, which accurately describes the premises, the new deed will be valid. All directions expressed as "northward" or "westward" mean due north and due west. There are four types of descriptions generally used:

1. Rectangular survey descriptions.
2. Lot number on plot or map.
3. Metes and bounds description.
4. Monuments.

Rectangular survey

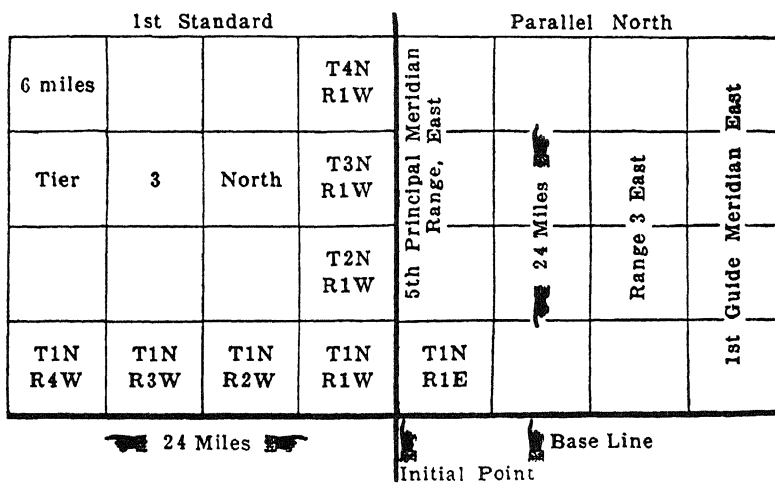
The rectangular survey was adopted by Congress as early as May 20, 1785, and is used outside of the original thirteen states. In the *Real Estate Primer* issued by the State of Iowa¹ the rectangular survey is explained and illustrated as follows:

This [rectangular survey] refers to a grid of north and south (meridians) and east and west (parallels) lines surveyed by the government. Identification of property is east or west so many ranges or vertical rows of checks from the north and south line called a "principal meridian" and so many horizontal rows of tiers or townships north of an east and west line called the "base line." Ranges run north and south and townships run east and west.

Distance between the parallels and meridians is twenty-four miles and the area contained therein is called a check. In this area are sixteen townships and the townships are further divided into thirty-six sections of a mile square each. The section is further divided into halves, quarters and smaller subdivisions.

Fractional sections on the north and west side of a township are due to corrections made of the survey lines for the curvature of the earth. This results in these sections having more or less 640 acres, depending upon corrections. In describing these sections the words "fractional sections" should be used.

SUBDIVISION OF A CHECK



*T1N means "township 1 north" R4W means "range 4 west"

In reading rectangular descriptions, for convenience one reads backwards from the general part of the description to the specific part at the beginning. The general part of the description refers to the range and township and the specific to that part of a section.

¹ Permission of C. R. Galvin, Director.

Lot number

The lot number is used in urban centers where there has been a concentrated development of land. A property is transformed from farm or vacant land into a subdivision laid out in numbered lots. The plan, if approved, is accepted by the municipality and recorded. The property would then be identified as “Being all of Lot #162 in the Bower Hill Plan of Lots as laid out, and recorded in the office of the Recorder of Deeds of Dauphin County in Plan Book Volume 18, Page 113, being designated as Block 14J Lot 44 in the records of the Dauphin County Deed Registry Office.”

SUBDIVISION OF TOWNSHIPS INTO SECTIONS

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

Adjoining sections are shown to give numbering.

Corrections for convergence are ordinarily made in sections 1, 2, 3, 4, 5, 6, 7, 18, 19, 30 and 31.

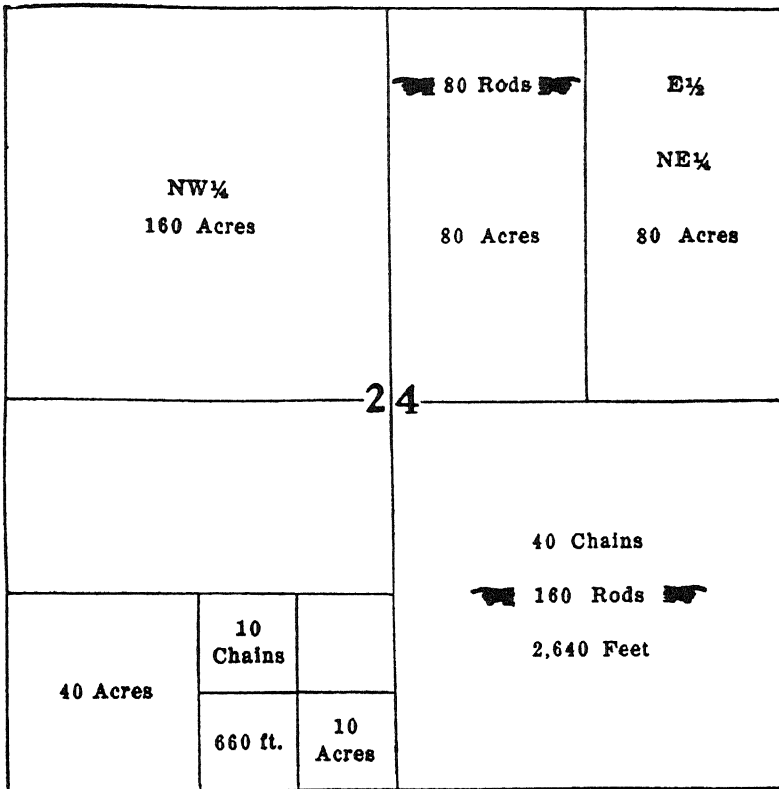
Metes and bounds

The oldest method of describing land is by “metes and bounds.” Metes are measurements of length—feet, inches, perches (1 perch = 16 ½ ft.); bounds are artificial and natural boundaries such as streets, roads, adjoining farms, roads and streams. Metes determine the certain quantity of land (acreage) while bounds confine that quantity within certain fixed limits. Such a description should have a definitely ascertained starting point, such as so many feet distant from the nearest cross street or at a definite lot dividing line, and then proceed clockwise, tracing the lines by directions and distances back to the point of beginning. A deed would be void in

which the starting point was given as “a point on Bowman Street at the dividing line of property of B. Davidson” and a search of the title failed to locate any property owned or occupied by the said Davidson.

SUBDIVISION OF SECTION

5,280 feet



SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$

Link.....	7.92 inches
Rod.....	16 $\frac{1}{2}$ feet
Chain.....	66 feet or 4 rods

The principle is well established that the courses and distances in a deed always give way to the boundary markers found on the ground or supplied by proof of their former existence when the marks or monuments are gone. Thus, a deed description “from said point, 40° 30’ west a distance of 220 feet to the Revolutionary chestnut tree” would give the purchaser 230 feet, if that was the actual distance to the tree in question. This rule is to be used only in reconciling discrepancies.

Monuments

In rural areas, descriptions by monuments are still frequently used. At the end of the description it is customary to insert "containing 64 acres, more or less." The description by monuments does not lend itself readily to an examination of the title, particularly for one not familiar with the locale of the property. A description con-

veying "10 acres more or less" of other lands, and not locating the particular 10 acres, would be void, owing to uncertainty.

Fences

When the owners of adjoining land have acquiesced in the location of a fence for a length of time required by the statute of adverse possession, they are thereafter precluded from saying that the fence is not the true line. It then becomes immaterial to inquire whether or not the fence is on the original boundary line.

Roads

It is a general rule of law, well established by authority, that a conveyance of lands bounded by a highway gives the grantee title to the middle of the road if the grantor had title and did not expressly or by clear implication reserve the bed of the road to himself. This right to the middle of the road is always subject to the right of the public. Ownership becomes important only if the road is abandoned later.

Streams

Where a nonnavigable stream is given as a boundary, the grantee takes to the middle of the stream as in the case of a street. In the case of a navigable stream, the grantee takes absolutely to high water mark and, in a qualified sense, to low water mark. That is to say, in the area between high and low water, his rights are subject to the rights of the public for navigation purposes, which include all privileges necessary for such purposes. A navigable stream in law is one which is navigable in fact. The land between high and low water mark is known as flat land. A description in a deed read "five acres of marsh meadow *bounded by the River S.*" The boundary of the firm land *by the river* carried with it the adjacent flat land. The fact that the description states that the land is bounded "by" a stream or that it runs "along" a stream and names a monument on the shore does not necessarily show an intention to exclude the stream, and this is regarded merely as a statement of the point at which the boundary strikes the stream. It is impractical to place a marker in the stream proper.

Right of navigation is the dominant right and superior to the right of fishing, but duty to exercise care rests upon both parties. Where both rights can be enjoyed freely and fairly, the right of navigation has no authority to trespass upon and injure the right of fishing: *Van Deusen v. Dunlap Towing Co.*, 562 P. 2d. 666 (Wash. App. 1977), where the court held that a crab fisherman could recover for loss of crab pots if destruction resulted from failure of vessels with log tows to use reasonable care.

An individual property owner has no absolute riparian rights of ownership in a navigable stream and to the land *below* high water mark, nor does he have littoral rights of ownership to land covered and uncovered by the flow and ebb of the sea tide. It has been held by the United States Supreme Court² that even the State of California has no title to the submerged land between the shoreline and the three-mile limit, but that title is in the Federal Government. The question of ownership is highly important because of valuable underlying oil deposits.

When a map, plan, or other survey is referred to in a deed, it becomes a material and essential part of the conveyance and is to have the same force and effect as if copied in it: *Segaro v. Cornell*, 196 S.E. 2d 341 (Ga. 1973). Where there is a deed reference to a map of a highway to be dedicated in the future, there are two opposing rules. The New York rule holds that such a reference to an unopened highway

² *United States v. California*, 332 U.S. 19 (1947).

raises a presumption of an intention to convey the land to the middle of the proposed highway as if the highway actually existed. The Massachusetts rule, on the other hand, states that the roadbed of the proposed highway is not included and the boundary is fixed at the side of the proposed highway. In Pennsylvania, the law seems to be that where the street is merely plotted upon the plan, the grantee takes only to the edge of the street, but when the street is opened, the grantee's title jumps to the middle of the street.

Calls in a deed are always to be controlled by lines on the ground. If the sale is made by lines staked and marked on the ground, such lines on the ground govern, if in conflict with the deed description.

Recital

The recital is a statement of facts interesting, or necessary, for persons examining a title to know. It tells how the grantor acquired title, or the reason why the deed is made, or some other explanatory remark. It usually follows the description, although when long, such as Trustee's or Executor's deeds made under an Order of Court, it usually comes after the names of the parties and commences with the word "Whereas." It can hardly be regarded as an essential part of the deed unless it contains something of a contractual nature between the parties to the instrument.

Appurtenances

The deed may contain the phrase "with the appurtenances and all the estate and right of the party of the first part [grantor] in and to said premises."

The right to the appurtenances goes with the property as a matter of law, so there is no real need for the above clause. All easements, rights, and incidents, which belong to the property conveyed and are necessary to its full enjoyment, pass as "appurtenances" without mention of them. What is merely convenient to the enjoyment does not. These include alleyways, water courses, light, and air. Thus, the deed should specify "together with" followed by a description of the rights intended to pass. What is appurtenant to a piece of land is appurtenant to every part thereof. Where a right of way is granted as appurtenant to a tract of land and the tract is later subdivided into smaller lots, each of the lot purchasers would be entitled to the same right of way. Also, where a property bounded by a private alley is sold, and the alley is necessary to the premises sold, the right to use it passes as an appurtenance to the property unless there is something in the conveyance restricting the use solely to the grantor or expressly excepting the alley from the grant: *Westland Nursing Home, Inc. v. Benson*, 517 P. 2d 862 (Colo. App. 1974).

Habendum clause

The habendum clause (to have and to hold), where used, operates to define the quantity of estate which the grantee is said to have in the property granted. The habendum is not absolutely necessary. The estate granted may be limited in the earlier part of the deed and if the habendum contradicts the earlier limitation, it will have no effect. If the two can be reconciled, then effect will be given to both. Where the limitation in the premises is in general terms, as to Jones and his heirs generally, and the habendum limits the estate to Jones for and during the term of his natural life, the grantee takes a life estate.

Warranties

A seller, in conveying property, makes certain representations to the purchaser. He warrants that he has a fee simple title, that he has the right and power to con-

vey it, and that there is no lien or encumbrance against the property. The seller is placed in the position where he personally guarantees the truthfulness of these statements and may be held personally responsible for them in case any of the statements are later proven false. Under the covenant of warranty the grantee may hold the grantor for any damage he has sustained. The three covenants of title relating to the ownership of a fee simple—the owner of the property in fee, the right to convey, and the freedom of the property from encumbrances—are known as covenants *in praesenti* (as of the present). The grantor also warrants that the grantee will quietly enjoy and that the grantor will make further assurances. These two warranties are known as covenants *in futuro* (as of the future). The quiet-enjoyment warranty means that the grantee will not be ousted by someone under a paramount title to his grantor. The further-assurances warranty provides that the grantor—if it is discovered at any time that, through an oversight or mistake in the deed, the grantee's title is imperfect—will voluntarily execute such instruments as are necessary to give the grantee the title which he thought he was receiving and which it was intended that he should receive. For example, a deed is improperly executed by the grantor. The grantee requests a new deed properly signed. The grantor cannot take the position that he is “through” with the deal and refuse to do anything more unless remunerated for doing so. Under the particular warranty the purchaser could enlist the aid of the court in compelling the seller to execute the necessary correction.

General and special warranty

The grantor also warrants the title and covenants to protect his grantee against any claimant. In a *general warranty* deed the grantor agrees with the grantee that he will “forever warrant and defend the property against every person or persons whomsoever lawfully claiming the same, or any part thereof.” In other words, he agrees to protect or defend the buyer against the entire world.

The covenant of special warranty is not so sweeping in its grant. A man may not care to defend the title of a property against everyone. He may feel that he should be required to guarantee the title only against himself or anyone claiming under him. A *special warranty* is a promise or covenant on the part of the grantor to defend the grantee against all claims which may be brought by the grantor or his heirs, assigns, or anyone claiming under the grantor. The general warranty clause can be made into a special warranty by inserting the few words “by, from, through, or under him.” If there are plural grantors, then use “them, or any of them.” A purchaser of real estate has no right to expect a covenant of general warranty in his deed unless he bargains for it in the agreement of sale. He cannot refuse to take the deed merely because it contains a special warranty. Trustee deeds and deeds given in pursuance of an order of court are special warranty deeds. Where no warranty is expressed the court will hold there is an implied special warranty in favor of the grantee.

Execution—power of attorney

A deed may be executed by the grantor himself, or through his proxy under a power of attorney. A power of attorney has been defined as “an instrument, in writing, under seal, by which the party executing it appoints another to be his attorney and empowers him to act for him, either generally in all matters of business, or especially to do some specified act or acts, in his name and behalf.” The power of attorney must be acknowledged so that it may be recorded in the county where the


property is located; it must be recorded so that a purchaser may know that the particular execution was properly authorized. Death of the person executing the power of attorney automatically revokes the power of attorney even if the agent has no notice of the death. An attorney-in-fact has no right to delegate his authority unless the instrument by which he is appointed expressly authorizes the substitution. The signature of a deed by an attorney-in-fact should read as follows:

"John Steele
by Adam Taylor
his Attorney-in-fact"

However, the attorney or agent need not sign his own name; the name of the principal alone is sufficient. Better practice dictates the agent's name as well.

Signature

The object of a signature is to authenticate the genuineness of the document. It is not essential that the grantor himself should sign the deed. His mark, where he cannot write, or even where he can, if intended as a signature, will be sufficient. Signature by mark would be:

(His
John  Steele
mark)

A signature by mark must be witnessed by two witnesses. Where the signing is done by a third person in the *presence* of the grantor and *at the direction* of the grantor, it amounts to a compliance with the requirements of the law. The ordinary situation is for property to stand in the name of one person. It is usual, however, where the title is in the name of the husband alone, to have the wife join in the execution of the deed. The wife joins for the purpose of extinguishing any claim which she may later have through her dower interest in the property.

A forged deed, unlike one procured by fraud, deceit or trickery, is void from its inception. In the latter event, the deed is voidable as between the parties thereto, but not as to a bona fide purchaser for value: *Harding v. Ja Laur Corp.*, 315 A. 2d 132 (Md. 1974).

Types of estates

We have already mentioned fee simple, which is the estate which can be created, and admits of the fullest and most complete ownership of real estate. Estates that are classified as to length of duration, for life or are inheritable, are termed freehold estates. In this category are: fee simple, life estates and estates upon condition (base fee). Estates less than a freehold comprise an estate for years; an estate granted for a limited or definite period of time (a leasehold), an estate at will and an estate at sufferance also fall in this category.

A life estate, as the name implies, is a conveyance to a person, to be owned by him during the period of his natural life. Upon his death, the property reverts to the grantor or his heirs (reversion) or to the person named in the deed to succeed the life tenant (the remainderman). The life tenant is entitled to the benefits of the property, but he cannot suffer the property to go into disrepair or commit waste: *Gibbon v. Gibbon*, 287 So. 2d (Miss. 1974). Mere non-use of premises was held insufficient to cause surrender of life estate: *Fabianski v. Boutin*, 371 A. 2d. (N.H.

1977). A life tenant cannot make a lease beyond his life estate: *Drees Farming Ass'n. v. Thompson*, 246 N.W. 2d 883 (N.D. 1976). A conditional fee estate is a conveyance of the property, to be used for a specified purpose, such as a school or church and, when that use is abandoned, the property reverts to the grantor or his heirs.

Owners in common have a mutual obligation to pay charges upon the property and the equity of one owner should not be enlarged by any expenditures made by the other party: *Singer v. Singer*, 342 So. 2d. 861 (Fla. App. 1977).

An estate from year to year is one for a definite period of time which then continues indefinitely until one of the parties elects to terminate it by giving proper notice. Thus, a lease for one year may continue for another year, at the expiration of the first year, unless either party has given the other party proper notice.

An estate at will is one which may be terminated at any time, without any formal notice.

An estate at sufferance is one where a person is in possession of premises lawfully, under a lease for a *definite* term, and then continues in possession, at the expiration of the term, without the consent of the owner. Blackstone defines a tenancy at sufferance to be where one comes into possession of land by lawful title but keeps it afterward without any title at all. After the lease period has expired, the premises revert to the owner.

Joint estates and estates in common

It has been stated previously that, where husband and wife own property together, the property is held by the entireties. In some states, as in Nebraska, it is termed a joint tenancy. Two or more persons may own property together; if they are not husband and wife, the ownership is joint or in common. In a joint tenancy, each party is possessed of an undivided part of the whole. In a tenancy in common, each is possessed of the whole of an undivided part. The language to create a joint tenancy must be clear and explicit; otherwise, the parties will be deemed to hold in common. In a joint ownership, a deceased party's interest in the property goes to the surviving owner or owners and not to the decedent's heirs or next of kin. A deed from Roger Harris to Carl Parsons and Edward F. Parsons, "as joint tenants, with the right of survivorship and not as tenants in common" would clearly create a joint estate. Upon the death of Carl Parsons, the property would vest absolutely in the surviving party, Edward F. Parsons, rather than in any surviving heirs or kin of Carl Parsons. If the conveyance from Harris were simply to "Carl Parsons and Edward F. Parsons," the grantees would hold as owners in common, and upon the death of Carl Parsons, his interest in the property would not go to the surviving party, Edward F. Parsons, but would vest in Carl's heirs. Where one joint owner dies, and there are two or more owners surviving, the property vests in all of the survivors until the last survivor, who succeeds to the entire estate. Joint owners must acquire ownership by a single deed. Husband and wife may hold property as tenants in common rather than by the entireties if the deed makes this clear. There must be present the four *unities* of time, title, interest and possession, in order to create joint ownership (joint tenancy).

In the case of *Zomisky v. Zomisky*, 449 Pa. 239 (1972), the grantor conveyed land to himself and his son as "joint tenants and as in common with the right of survivorship." Upon the father's death, the son claimed title to the land. The other children of the decedent brought suit, claiming that the deed created a tenancy in common. The Supreme Court, in affirming the lower court, held that the language

in the deed was sufficiently clear to create a joint tenancy, with the right of survivorship.

In the case of *Yannopoulos v. Sophos*, 365 A. 2d. 1312 (Pa. 1976), a property was owned by brother and sister as joint tenants with right of survivorship. An agreement of sale for the property was signed by the brother on November 12, 1973. The sister, residing in Mississippi, sent a telegram to the broker, approving the sale. The brother died on November 16, 1973.

The question is whether the sister is entitled to the entire proceeds of the sale, or whether the deceased brother's estate is entitled to one-half.

The Court held that the execution of the agreement of sale by the deceased brother alone terminated the joint tenancy and created a tenancy in common. The executed agreement of sale by the brother vested equitable title in the purchaser, and the vendors then became trustees, holding the bare legal title for the purchaser, who became trustee for the seller for the balance of the purchase price. One-half of the proceeds of the sale was due to the deceased brother's estate.

Where one of two joint owners leases the property so held, the tenancy is not severed: *Tenhet v. Boswell*, 133 Cal. Rptr. 10 (1976).

A deceased joint owner's interest in real estate is subject to inheritance and estate taxes. Thus, if four persons hold title in this manner and one dies, tax liability would be based on one-fourth of the value of the property at the date of death. A sale by one of three joint owners of his interest would not destroy the joint ownership of the remaining two as joint owners of two-thirds. The purchaser of the one-third interest would become a tenant in common, to that extent, with the two joint owners.

A conveyance of a farm to Francis Lucas, a single man, and to Joseph and Matilda Lucas, husband and wife, raises the serious question whether each of the three grantees owns an undivided one-third interest, whether Francis owns a *one-half* interest, and Joseph and Matilda own the other half by the entireties, or whether Joseph owns a one-third interest and the married couple own the other two-thirds by the entireties. A broker preparing a deed is duty-bound to "spell out" the *intentions* of the parties, but he must first be cognizant of the applicable law under the circumstances. If the intention is not sufficiently manifested, a serious consequence may ensue. With no more language in the deed than indicated in the Lucas case above, Francis would own a *one-half* interest and Joseph and Matilda would own the other half interest by the entireties.³

A conveyance was made to James C. Miller, being unmarried, and Dimitri Katsowney and Elfena Katsowney, his wife, as joint tenants and not as tenants in common. James C. Millona (Miller) died. There was no question raised as to the Katsowneys holding an estate by the entireties. The issue was whether Miller, the co-grantee, became a joint tenant or a tenant in common. It is clear that Miller was a tenant in common and at his death the sale by the administrator, of his interest, was valid.

The Uniform Partnership Act provides for a special form of tenancy, called a "tenancy in partnership." Such property must be purchased with partnership funds and used for partnership purposes. A deed must clearly indicate that the conveyance is to a partnership, *as such*; otherwise, the grantees will be considered as tenants in common. In case one partner dies, his surviving widow would have no dower right or claim in such real estate. The value of the deceased partner's interest in the property would become a part of his estate. If the two or more persons purchase real estate "as partners," this would not constitute partnership property,

³ Heatter v. Lucas, 397 Pa. 296 (1951).

within the contemplation of the law. Instead, they would own the property as tenants in common.

Estates by the entirety

In early times, there was a common law fiction that the husband and wife were one, and that the husband was that one.

Where property is held in the name of husband and wife, it is known as a joint tenancy and in some states as an estate by the entirety. This latter form of ownership is operative in the states of Alaska, Arkansas, Delaware, Florida, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Wisconsin and Wyoming.

In the Tennessee case of *Ballard v. Farley*, 226 S.W. 544 (1920), the Court held that a conveyance to a named person "and wife," without naming her, was sufficient to create an estate by the entirety. It exists only in favor of husband and wife and has certain advantages to recommend it. A deed from John Steele to Adam Taylor and Anna Mae Taylor, his wife, would automatically create such an estate. Both signatures are absolutely essential in order to convey title. Where the parties are separated, neither spouse can convey or lease without joinder of the other spouse: *Schweitzer v. Evans*, 63 A. 2d 39 (Pa. 1949). Upon the death of one, the property immediately and automatically vests in the surviving spouse; no court proceedings are necessary. The property is usually free from state inheritance taxes, and in most states a judgment against one of the parties would not be a lien against the property, unless the debtor spouse survived.

In the case of *Sawada v. Endo*, 561 P. 2d 1291 (Hawaii 1977), a judgment was entered against the husband alone, as a result of an automobile accident. After the start of the suit, the husband and wife conveyed real property to their sons. The judgment creditors challenged the transfer as fraudulent. The Supreme Court decided otherwise, holding that the subject property could not be severed into separate interests, and, therefore, was not subject to the judgment against one spouse. Both parties can join in a good conveyance of the property, free and clear of the judgment against the one party. A judgment entered against the husband, for example, would not be extinguished by such sale of the property. However, if a judgment exists against one spouse, and husband and wife desire to obtain a mortgage, they may experience difficulties. Since the judgment antedates the mortgage, the real possibility exists that the wife might die before the husband, and the judgment creditor would have precedence over the mortgage. The distinction between sale of the property, free from the judgment lien, and mortgaging the property, subject in a qualified sense to the judgment, lies in the fact that a mortgage is only a *temporary* transfer of the property, and when paid off, title to the property reverts to husband and wife, as an estate by the entirety. Then, the judgment creditor must await the fortuitous circumstance that the wife die before the husband, in order for him to proceed against the property, to obtain payment of his judgment, by foreclosure proceedings. Most married couples, in states adhering to the estate by the entirety concept, prefer to hold property in this manner, because of the advantages offered. So long as there is a harmonious marital relationship, it should be recommended in most cases. Possibility of federal estate tax liability, if the husband is wealthy, might discourage this form of tenure. Both husband and wife must join in a deed to convey the property in order to convey a good title.

However, in New Jersey and New York, it has been held to the contrary: *Zanzonico v. Zanzonico*, 124 N.J. Eq. 477; *Martose v. Martose*, 134 N.Y.S. 2d. 831 (1954). Both share equally in the rents and profits and each spouse can compel an accounting in this connection, but not where one of the parties uses the residence as a home. In *Garner v. Pierce*, 134 A. 494 (Pa. 1926), the property owned by the entireties was leased by the husband alone to a tenant, who paid the rent to the husband for a while, and then, for two months, it was paid to the wife. The husband then distrained upon the tenant's goods. The Supreme Court held that either spouse could lease the premises, but both were entitled to the income. The lessee was relieved from further obligation.

Divorce will terminate the ownership by the entireties and each spouse will then own one-half of the property as tenants in common. Unless the parties can agree, amicably, to join in a deed for sale of the property, it would be necessary for the spouse desiring to sell to enter a court action for a sale of the property. The proceeds would then be divided equally between husband and wife.

Where a conveyance is made to two married persons and their spouses and it is intended that each couple shall hold by the entireties, the names and status of the respective parties should be set forth as follows:

THIS DEED, made the 10th day of June, 1978, between JOHN T. STEELE and FRANCES L. STEELE, his wife, of the city of Miami, County of Dade, and State of Florida,

A
N
D

WILLIAM C. GRAY, JR., and THELMA T. GRAY, his wife, and CARL T. FRYE and ALICE L. FRYE, his wife, of the same place, AS TENANTS BY THE ENTIRETIES AS TO THE RESPECTIVE SHARE OF EACH HUSBAND AND WIFE AND AS TENANTS IN COMMON OF THE WHOLE.

Sometimes a man and woman take title to property as husband and wife, when they are not so in fact. Such a tenure is not void, but they will hold title as joint tenants or as tenants in common, depending upon what the court could determine as their *intention* from all of the facts:

In the Maryland case of *Michael v. Lucas*, 152 Md. 512 (1927), property was deeded to Joseph H. Kuntz and Emily H. Kuntz, as tenants by the entireties, the survivor of them, his or her heirs, personal representatives and assigns. The grantees were unmarried. The court held the deed valid and upon the death of Joseph, the named Emily acquired title, as the survivor-joint tenant, since that was clearly the intention: *Adams v. Foster*, 466 S.W. 2d 706 (Mo. 1971).

Homestead

The broad purpose of homestead laws has been aptly stated to be "to promote security of home and to place homestead property beyond reach of consequences of homeowner's economic misfortunes: *Swearingen v. Byrne*, 136 Cal. Rptr. 736 (1977).

Homestead property resembles an estate by the entireties. Homestead laws exist in Alabama, Alaska, Arizona, Arkansas, California, Florida, Georgia, Idaho, Iowa, Louisiana, Massachusetts, Michigan, Missouri, Mississippi, Oklahoma, South Dakota, Texas, Vermont, Virginia, West Virginia, Wisconsin and Wyoming. Property owned and occupied as a home, in a certain amount, is known as the family homestead. Both husband and wife must join in any deed or mortgage for this property. In the

interests of public policy for the preservation of the family, homestead property cannot be sold to satisfy a judgment against one spouse.

In the case of *Solomon v. Solomon*, 546 S.W. 2d 129 (Texas 1977), the Court held that the Texas provision of the Uniform Reciprocal Enforcement of Support Act did not authorize levy of execution upon homestead property in a case involving a suit to collect arrearages for support for children under a divorce decree. Certain elements must be present to establish a homestead. There must be a family of two or more persons living together under a family head and actually occupying the land in question. The proper declaration must be filed that the property is actually occupied as a homestead. The homestead laws provide maximum areas and values of the homestead. In Arkansas, for example, the statute sets up two types of homesteads: first, the rural homestead, outside of any urban district, owned and occupied as a residence, consists of land not exceeding 160 acres, but no less than 80 acres, and not exceeding \$10,000 in value; second, the urban homestead, in a city, town or village occupied as a residence, cannot exceed one acre of land, but no less than $\frac{1}{4}$ acre, and not exceeding \$2500 in value. It is not necessary for a person to live on a homestead in order to claim homestead rights, but there must always be an *intention* to return to the homestead. In Texas, property upon which the head of the family conducts his business is known as his "business homestead." In California, the exemption from execution on homestead property is \$7500. In Florida, homestead exists as to 160 acres outside an incorporated city or town, and as to one-half acre if located within a city or town, which is exempt from execution for debt. There is a \$5,000 tax exemption of the property assessment. In California, the value of a homestead that may be claimed by heads of family and persons 65 or over is \$30,000, and for other persons \$15,000.

In Wisconsin, not exceeding $\frac{1}{4}$ acre residential; 40 acres rural can be held as a homestead.

In *Heard v. Mathis*, 344 So. 2d 651 (Fla. App. 1977), the Court held that tests of a "family" for homestead purposes, which must be met singly or in combination, are: (1) a legal duty arising out of the relationship, and (2) a continuing communal living by at least two individuals, where one is regarded as the person in charge.

Community property

Property acquired during coverture (marriage) other than by gift, devise, or descent is community property, and each spouse owns an undivided one-half interest, and each is entitled to dispose of his or her interest.

The basic concept of community property is that *whatever may be acquired during marriage by the efforts of either spouse belongs, on acquisition, in equal halves to both*. It was introduced into the United States through the Spanish-influenced laws of Mexico. The institution exists in California, Louisiana, New Mexico, Texas, and Arizona. It has likewise been incorporated into the statutes of Nevada (1865), Idaho (1867), Washington (1869), Oklahoma and Hawaii (1945), Michigan, Nebraska, Oregon, and Pennsylvania (1947).⁴

Enactments were prompted by a desire to reduce Federal income taxes payable by the income-producing husband. Court decisions are not uniform as to the allocation of income received by each spouse from different sources. Texas cases hold that *all* income received during marriage is community property, including income from a trust in which one of the parties has a life estate. In California, the Supreme Court held to the contrary, maintaining that a wife's income from her *separate* es-

⁴ Pennsylvania Act declared unconstitutional in case of *Wilcox v. Penn Mutual Life Ins. Co.*, 357 Pa. 581 (1947).

tate remained as her separate property. In Idaho, Louisiana and Texas, such separate property of the wife is considered community property.

The community ownership is terminated by death of one spouse, or by divorce. Both husband and wife must join in a conveyance of the real estate.

Curtesy

Curtesy is the right that a husband has in his wife's estate *at her death*. While both dower and curtesy have been abolished by statute in a number of states, a spouse may, under the law, elect to take against a will, and also, in cases of intestacy, receive a percentage of the estate. Usually, it is one-third of the estate, if there are children. An absolute divorce bars dower or curtesy, and creates the same status as if the parties had never been married.

States which recognize dower, as such, are: Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, New Jersey, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

Curtesy is recognized in Alabama, Arkansas, Delaware, District of Columbia, Hawaii, Idaho, Kentucky, Maine, Massachusetts, New Jersey, Rhode Island, Tennessee, Vermont, Virginia, Wisconsin and Wyoming.

Deed by married women

In some states, where a married woman owns or inherits property in her name alone, the husband must join in a conveyance of the wife's land, or in an agreement to sell such land, in order to extinguish his curtesy.

In some states—Arkansas, Hawaii, Tennessee and the District of Columbia—a wife can convey title to real property, owned in her name alone, without jointure of her husband.

For cause shown, as where the husband has deserted the wife or is a profligate, the court, upon application of the wife, may declare her a *feme sole*, as if she were unmarried. She could then execute a valid deed by her signature alone. In Arkansas, Oklahoma, and other states, a married woman can convey her separate real estate without the joinder of her husband.

Where property is owned by a single woman who enters into an agreement of sale and, before the consummation of the deal, marries, the purchaser can compel the wife and her newly acquired husband to join in a valid deed. Since the married woman, prior to marriage, had contracted to sell the property, she retained only the bare legal title after the agreement of sale was signed, and her marriage was ineffective to enlarge her interest or to impinge upon the equitable title obtained by the purchaser under the agreement.

Dower

Dower is the right which a wife has in her husband's estate *at his death*. It is an inchoate or potential right which does not vest unless she survives her husband. It is personal to the wife alone and can only be asserted by her. It sometimes develops that a seller's wife refuses to sign the deed. She cannot be compelled to do so, unless she has signed the agreement of sale. In that event, an action can be maintained in court for specific performance to compel her to sign the deed. Thus, it is wise to have the wife join in the agreement, even though the property is in the name of the husband alone. If she does not sign the agreement of sale and refuses to join in the deed, the land remains subject to her dower interests in it. However, a

husband ordinarily can mortgage his own real estate without the joinder of his wife. Sometimes a mortgage to the buyer is used to circumvent the wife's dower interests. If the wife can show fraud upon her, the transaction could be set aside unless the rights of a bona fide purchaser, without notice of the fraud, have intervened. The wife cannot prevent the sale of real estate by her husband, and she does not have any right of action against the purchaser until after the death of her husband, and then only in the case that she survives him. It sometimes happens that a man and woman contemplating marriage will enter into an agreement determining their property rights after marriage. This is known as an ante-nuptial agreement and is frequently used where one or both of the contracting parties are advanced in years. Under this agreement, the wife-to-be may surrender her rights in her husband's real estate, and he, in turn, agrees to relinquish any claim to her real estate after her death. Such agreements are not contrary to public policy, and if fair and conscionable, will be enforced. Thus, if a wife, prior to marriage, has entered into an ante-nuptial agreement and after marriage refuses to join in the agreement of sale or the subsequent deed to property owned by her husband alone, she may be compelled to execute her joinder by virtue of her previous agreement.

Dower is an encumbrance within the meaning of the term. If the wife refuses to sign, a purchaser has two alternatives. First, he can refuse to accept the deed signed by the husband alone and demand damages for the expense to which he has been put. Second, he can accept the husband's deed, in which event he is required to pay the full purchase price. He then assumes the risk of the wife predeceasing her husband or, if she does not, of paying her dower claim. Or, the husband and buyer may negotiate the purchase price and reduce the price by discounting the dower hazard. Dower, as such, has been eliminated in some states.

Corporations

A corporation is a legal entity, separate and apart from the members (stockholders) who comprise it. In purchasing real estate from a corporation, it is important to ascertain whether the necessary authorization, in the form of a resolution by the Board of Directors for the specific sale, has been obtained. If the corporation has been formed to deal in real estate, a *general* resolution of the Board of Directors, authorizing certain named officers (usually President and/or Secretary) to execute deeds will suffice. Stockholders have only limited liability in a corporation. The official seal of the corporation should be affixed to the deed. If a deed is for all of the assets of the corporation, the by-laws usually require a two-thirds vote of the stockholders.

Reading deed

Where a grantor signs a deed, he is presumed to have read it and to be familiar with its contents. Illiteracy is no defense to the validity of the instrument. If a person cannot read, the burden is upon him to have someone read the deed to him. A grantor cannot complain at a later date that the transaction has turned out differently than he anticipated, or that he was unaware of the full import of the deed, because he could not read. Where the illiterate grantor has been imposed upon and the deed content misrepresented to him, equity will grant relief and set the transfer aside.

Witnessing

In most states it is not necessary to have the deed witnessed. In Georgia, the law requires two witnesses in order to record a deed, but without witnesses, the deed is valid between the grantor and the grantee. It is a good precaution in the event that a dispute arises, for the subscribing witnesses to be procured to testify as to the deed execution. The witness attests nothing but the signing and delivery of the deed. The date and other contents of the deed are matters which he does not attest and to which he seldom attends.

In the Florida case of *Wickes Homes v. Moxley*, 342 So. 2d. 839 (Fla. App. 1977), the Court decided that "there is no longer a requirement under the new Constitution for a mortgage of homestead realty to be signed in the presence of two attesting witnesses."

Acknowledgment

In addition to signing, sealing, and witnessing a deed, it is customary for the grantor to acknowledge it. The acknowledgment is a formal declaration made before a notary public, justice of the peace, alderman, or other official empowered to perform this service, affirming the genuineness of the signature on the deed. The acknowledgment accomplishes two things: first, it establishes the deed as *prima facie* evidence in any legal proceeding; that is, the deed will be accepted as evidence without any further proof of its genuineness; and second, *it permits the recording of the deed*. The acknowledgment contains the venue or county in which it is executed—"State of Illinois, County of Cook"—, the date, the name of the grantor, and the signature, seal, and expiration date of the commission of the officer taking the acknowledgment. It should state that the affiant is personally known or satisfactorily proved to be the subscriber. The grantor's marital status should also be indicated—"John Steele, unmarried," or "John Steele and Mary Steele, his wife," or "John Steele, unmarried, and Helen Steele, unmarried." In most states, only one acknowledgment need be taken for both husband and wife. In some states—Alabama, New Jersey, Texas and South Carolina—separate acknowledgments are necessary for husband and wife. The married woman's acknowledgment must be taken apart from her husband—that she signed the deed freely and voluntarily. In North Carolina, a separate acknowledgment is necessary in a conveyance from a wife to her husband.

Delivery

Delivery is one of the most important steps in the transfer of title to real estate. A deed, signed, sealed, witnessed, and acknowledged, does not pass title until it is delivered by the grantor to the grantee, or to a third person for him: *Murphy v. Traylor*, 289 So. 2d 584 (Ala. 1974). A deed is presumed to have been delivered on the date which the deed bears: *Doyle v. Carter et al*, 362 N.E. 2d 214 (Mass. App. 1977).

In the case of *Scroggins v. Roper*, 548 S.W. 2d. 779 (Tex. Civ. App. 1977), the Court said:

No particular form of words or action is necessary to constitute delivery of a deed, but manual delivery is not necessary; a deed may be delivered by words without acts, by acts without words, or by both. An intention to give present effect to an executed conveyance is sufficient.

In *Fiori v. Fiori*, 405 Pa. 303 (1961), a deed was executed in 1940. It was not recorded until 1957. The grantor died in 1942. The court found that the grantor, at no time, told the grantee, or any member of his family, about the deed. The grantor controlled the property until his death. The court held that there was no presumption of delivery. An unrecorded deed, found by grantee among grantor's papers, after grantor's death, does not pass title, although grantee had said that it belonged to grantee: *Willingham v. Smith, et al.*, 106 S.E. 117 (Ga. 1921); *1st Natn. Bank of Gainesville v. Harmon*, 199 S.E. 223 (Ga. 1938); *Allgood v. Allgood*, 196 S.E. 2d 888 (Ga. 1973).

As between the parties to a deed, it is necessary that there be delivery to grantee. Validity of the delivery depends upon intention of the grantor: *Proctor v. Forsythe*, 480 P. 2d 511 (Wash. 1971). When the deed is not "handed over," question of delivery arises. If delivery may be "presumed" from the circumstances, then title will pass. The question to be determined is the *intention* of the grantor. An executed deed, recorded by the *grantor*, would raise a strong presumption of delivery. Ordinarily, it may be said that retention of the deed by the grantor raises a strong presumption against delivery and possession by the grantee creates a presumption in favor of delivery. In both cases only a presumption is raised and is subject to rebuttal by proof.

Deposit of a deed with a third person to be turned over to the named grantee, upon death of grantor, constitutes a "delivery," only if grantor surrenders all control over deed, and conveys a present interest in the property. Intention can be construed through conversations and acts at time deed was delivered to third person: *Cain v. Morrison*, 512 P. 2d 474 (Kan. 1973).

Where decedent supplies purchase money for land, but took title in name of her cousin, who did not know of deed to him, title did not pass to him after the death: *Caron v. Wadas*, 305 N.E. 2d 853 (Mass. 1974).

Delivery absolute

There are two kinds of delivery, delivery absolute and delivery in escrow. Delivery absolute occurs when made to a grantee or his agent without any conditions or stipulations attached. This is the usual situation.

In escrow

A delivery in escrow occurs when the deed is delivered to a third person and will take effect only upon the performance of some condition by one of the parties or the happening of some event. In an escrow delivery, the grantor loses all control over the deed, and he is powerless to recall it: *Fike v. Harshbarger*, 317 A. 2d. 859 (Md. 1924). The condition of the escrow must be stated *at the time* the deed is turned over to the escrow holder and not at some later date. The *time* for performance of the escrow condition should be definitely stated and, also, what happens if the condition is not performed. Otherwise, the delivery will be considered absolute and the escrow holder as agent for the grantee. The escrow holder should require that the condition of delivery be in writing, signed by the interested parties. A deed delivered in escrow will pass no title if it is stolen or otherwise fraudulently procured by the grantee or if delivered to him without fulfillment of the escrow condition, but a bona fide purchaser from the grantee, without notice, will obtain good title.

It should be remembered that the escrow holder must be some disinterested or impartial third person and the principals or their legal counsel are not such disin-

interested parties within the contemplation of the law. Nor is a broker a disinterested third party, because he is the agent of the owner from whom he receives compensation for his services in the form of a commission. A bank, title company or an escrow company should preferably be used as the escrow holder. A deposit of earnest money with a real estate broker should not be confused with an escrow.

Recording

When the deed has been signed, sealed, and delivered, the transfer of title is complete. Recordation is of no importance insofar as passing of title is concerned between grantor and grantee: *Huntington City v. Peterson*, 518 P. 2d 1246 (Utah 1974). However, in order for the purchaser to protect himself in the ownership, the law requires him to take one additional step. This consists in recording or registering his deed in the office of the Recorder of Deeds, Registrar, or Register of Deeds in the county where the property is located. The recording of a deed consists in having it transcribed in a proper book and indexed, so that the public at large may have notice of the transfer of title. The deed should be recorded promptly in order to protect the grantee against a subsequent conveyance of the same property by his grantor, or against a mortgage or judgment entered against the same grantor. Green delivers a deed to White on December 6, 1977 which is not recorded until March 21, 1978. A judgment entered against Green on February 21, 1978 would be a lien against the real estate in question. So also, a bona fide purchaser of the same land from Green would have a preferred claim to the property if he had no actual or constructive notice of the transfer to White. Actual notice is express or direct knowledge gained in the course of the transaction.

Once a deed is recorded, all persons are presumed to have constructive notice of the contents of the recorded instrument: *American Medical Intern, Inc. v. Ortiz*, 111 Cal. Rptr. 617 (1974).

Constructive notice is notice given by public records. If a deed has been recorded in the proper office of the county, this is constructive notice to the public. A deed recorded outside the chain of title does not constitute "constructive notice" under the Recording Act: *Sabo v. Horvath*, 559, P. 2d 1038 (Alaska 1976).

Suppose that Black is purchasing a property from Stone, knows that Stone at one time had mortgaged the property to Chase. That fact would not be notice, per se, to Black, unless he learned of it in the course of his negotiations with Stone for the purchase of the particular property. Notice of the existence of the mortgage would be *presumed* under the circumstances. These circumstances would make a prudent person suspicious and cautious and invoke further inquiry.

Also, if the land is not in the possession of the person claiming ownership, but is occupied by the holder of a *prior* deed, a little inquiry from the party in possession would reveal the duplicity of the original owner.

Actual notice

In *Weddell v. City of Atlanta*, 172 S.E. 2d 862 (Ga. 1970), the court held that actual possession of the realty by a wife and children was sufficient to put all who might purchase from the husband on notice and on inquiry as to what interest or claim they might have.

Indexing of deed

The buyer, or his attorney, should make sure that the deed is properly indexed in the Recorder's Office (or Register of Deeds). If the deed is not indexed, or it is improperly indexed, a grantee may suffer serious consequences, by entry of a judg-

ment, or a mortgage, or even a subsequently recorded deed, against his grantor. This situation points up the advisability of obtaining title insurance: *Adams v. United States*, 76 U.S. Ct. No. 1333, S.D., N.Y. 1976.

Torrens system

A system of land registration was introduced in Australia in 1858 by Sir Robert Torrens. The system provided a permanent method of title registration with an assurance fund out of which losses due to title defects would be paid. Once the title is registered by an owner, subsequent transfers of the certificate of title registration could be readily effected at slight expense. The original Torrens system has not made any great inroad into the recording system in this country due to the initial expense involved, certain substantial objections inherent in the system, and the opposition of the title companies. Although adopted in varying forms in a number of states (California [Repealed in 1955], Colorado, Georgia, Illinois, Massachusetts, Mississippi, Minnesota, Nebraska, New York, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Washington), title searches are, in the main, still required. In Massachusetts and Illinois are found the most satisfactory applications of the Torrens system. Adaptations of the Torrens system require the registration of title ownership through court proceedings. The certificate of title issued by court authorization is conclusive insofar as the character of the title is concerned.

Adverse Possession

ORDINARILY, AN OWNER of real estate relies upon a “paper” title to establish ownership; that is, by deed from his predecessor, which, when traced back, shows a continuity of title ownership to the source of title in the particular state. An examination of the public records establishes a “chain of title” upon which the occupier of land relies to prove ownership. Technically, title emanates from a sovereign power or government, the exact source varying in the different sections of the country. However, a resident of land may claim title to property without any deed or color of title at all. He may rely upon adverse occupation. Such title may be superior to that of the holder of the “paper” title if certain statutory requirements are met. This is known by title as *adverse possession*. The law governing adverse possession is now universal, being enforced in practically every state of the country. The purposes of these laws are identical. They are prompted in the first place by the demands of public policy which hold that a statute of this kind is necessary to prevent the abandonment of any portion of the territory. The law provides that where an occupier holds land and maintains actual, continuous, hostile, notorious, distinct, and visible possession for the required period of time, he is deemed to have the legal title as against one who holds a deed for the same land. The period varies from seven to thirty years. In Arkansas and Utah, 7 years is the statutory period; Mississippi, Missouri, Nebraska and Oregon, 10 years; Connecticut, Kansas, Kentucky, Minnesota, and Oklahoma, 15 years; Illinois, Massachusetts, Maine, New York, 20 years; Pennsylvania, 21 years; Texas, 25 years; and Louisiana, 30 years. The Adverse Possession Act is in a sense a statute of limitations in that it bars the legal owner from asserting his claim to the land where he has remained silent and done nothing to oust the adverse occupant during the statutory period. The theory of the law is that “no person ought to be permitted to lie by while transactions can be fairly investigated and justly determined, until time has involved them in uncertainty and obscurity, and then ask for an inquiry.” An adverse claimant may petition a court for a decree to perfect his title. A party claiming title by adverse possession bears a heavy burden of proof: *Kerrigan v. Thomas*, 281 So. 2d 410 (Fla. App. 1973).

Actual possession

Incidents which help establish actual possession include building a dwelling or other structure, clearing brush, sowing crops, pasturing cattle, erecting fences, cutting timber, irrigating the land, constructing drainage ditches, planting orchards, and paying taxes. However, payment of taxes by an adverse possessor of land is not the controlling factor to establish title. In Florida, taxes must be paid by such adverse claimant for the requisite 7-year period, unless he has color of title, i.e., some written instrument or court decree: *Meyer v. Law*, 287 So. 2d 37 (Fla. 1973).

By actual possession is meant such a possession of the property as leaves no doubt in the mind of the ordinary person as to the nature of the occupancy. The law insists that the claimant must show the performance of adequate acts amounting to an open denial of the title of

the recorded owner. It must not be inferred, however, that he is required to exercise force, as the law does not insist that a man should provoke a quarrel in order to demonstrate his ownership. Evidence of actual possession is to be taken from such facts as cultivating the land, erecting improvements upon it, fencing in the property, and payment of taxes. It has been said that the adverse claimant "must unfurl his flag on the land, and keep it flying, so that the owner may see, if he will, that an enemy has invaded his domains, and planted the standard of conquest." . . . The owner is, of course, chargeable with knowledge of what is openly done on his land and therefore calculated to attract attention. But a mere passive possession without intending to claim the property, is insufficient, regardless of the length of time it continues, or however open, notorious, or exclusive it may have been. (1 R.C.L. section 7, 693.)

In a wooded area, indistinct markings, which consisted of a few strands of barbed wire, tacked to trees, but not on the claimed boundary line, would not give notice of an adverse claim: *Wales v. Lester*, 517 P. 281 (Or. 1973).

A tenant could never claim title by adverse possession no matter what improvements he might make nor how long he might be in possession, because he acknowledges the superior title of his lessor from the very beginning.

Where a party occupies property, under a permissive use, he cannot claim title by adverse possession: *Burns v. Owens*, 357 S.W. 2d 520 (Ark. 1962); *Dimmick v. Dimmick*, 374 P. 2d 824 (Cal. 1962). Payment of taxes alone, without actual residence and dominion over the property, would be insufficient to prove adverse possession. Payment of taxes is entitled to some weight in proving the adverse claim, but it is a contributing factor, not the controlling one: *Davis v. Mayweather*, 504 S.W. 2d 741 (Ark. 1974); *Talmadge v. Adams*, 240 S.E. 2d P. 9 (Ga. 1977); *Kerrigan v. Thomas*, supra. (substantial enclosure by fence).

Constructive possession

It is not to be inferred that actual possession of a particular tract or area will cover a larger tract in its entirety. It is a well-recognized principle in the United States that a person having a "color of title"—that is, anything in writing concerning the title which serves to define the extent of the claim, no matter how imperfect the paper title is—is to be regarded in constructive possession of the whole tract although he is in actual residence of only a part of it. The entry of the owner would be barred to the entire tract after the lapse of the statutory period. This rule is founded on the theory that the person claiming adverse possession under "color of title" has a notorious possession by reason of the written instrument. A realistic interpretation of this doctrine must be made. It is doubtful whether possession of a few acres out of a thousand purported to be conveyed by the invalid deed would be held to be constructive possession of the whole. The rule concerning constructive possession applies when possession is taken, first, under a conveyance which is invalid either for want of title or capacity in the grantor or for want of proper formalities in the execution of the instrument, and second, under a void or voidable decree of court. However, if the paper title under which a person claims is a nullity, the adverse occupier acquires title only to so much of the land as has been actually occupied. One who enters into possession of a part of a tract of land under "color of title" is immediately, by construction of the law, in actual possession of the whole tract. But one who enters without "color of title" is a trespasser and acquires title only to the area actually occupied. In some states, where there is color of title, the period of adverse occupancy is materially reduced.

Continuous possession

The next requirement is that a claimant must have exercised continuous and uninterrupted possession for the statutory period. Any abandonment of the property would defeat the title. A man claiming title to a wood lot by adverse possession will be defeated if he shows that the only occupancy of the property has been an occasional visit to it for the purpose of cutting fire wood or for fence material. Likewise, a man cannot claim title by adverse possession to a coal mine to which he made only sporadic visits for a supply of coal. In the case of farm land, where the rigors of winter prevent its cultivation and the claimant temporarily abandons it to follow his trade so that he can obtain funds for the purchase of necessary farm implements, the continuity of his possession would not be broken.

Tacking

Where the possession has been continued for a number of years and has been handed down from one to another without any break or interruption, for a valuable consideration, or by descent as from parent to child, it is in some measure respectable. The right which the adverse occupier has in the property, although it has not ripened into title, may be sold. The purchaser can "tack" his seller's period of occupation to his own possession in computing the necessary statutory period. The possession is *connected* by privity of contract or by descent. For example, Adams takes possession of certain land in 1945 and sells his interest to Bell in 1953. Bell remains in possession until 1968. Bell can claim title to the land through the necessary period of adverse possession.

In order to take advantage of "tacking," it is advisable to indicate in the deed that the grantor is transferring all rights to any portion of the tract claimed by adverse possession to the grantee. Such a clause would read:

The parties of the first part hereby convey any title by adverse possession to any property adjacent to the above described premises.

In the case of *Lewkowicz v. Blumish*, 442 Pa. 369 (1971), a dispute arose between adjoining property owners as to their respective use of a driveway. The defendant claimed a prescription right by adverse possession. The Pennsylvania requirement for adverse possession is 21 years. The defendant, who acquired title to his property only three months earlier, could only establish 12 years' use by his grantor. Tacking on the 12 years to his 3 months' use was far short of the 21-year requirement.

Party who had been in possession of tract since 1945 when he purchased it could not tack on possession of his ancestor, to satisfy the 30-year requirement, since the ancestor's possession was not hostile to plaintiff's claimed ownership: *Thibodeaux v. Quibodeaux*, 282 So. 2d 845 (La. App. 1973).

Hostile or notorious possession

The next requirement is hostile or notorious possession. The claimant must show that his possession has been hostile to the holder of the paper title, and not subordinate to it. The adverse possessor "must keep his flag flying," which means that he must exercise all the acts of dominion over the land, not only against the outside world but also against the owner in case the opportunity presents itself. If he recognizes the claim of the owner as superior to his own, he defeats his own claim because the element of hostile possession is lacking. Where the owner is absent or can-

not be found, the question of hostility is purely one of invention. It may be said that hostile merely means occupation *foreign* to the paper title.

The doctrine of hostility, however, varies in different states. The Connecticut rule, frequently cited in other states, is that where two owners had located a line between their properties in an inaccurate manner, under an honest belief or mistake as to the exact boundary, with the result that one of them had occupied a strip of land which was, in reality, the property of the other, for the statutory period, without interruption, he should be given title to it even though there had been no intention to do wrong, or to exercise a hostile possession against his neighbor. The courts have decided, in effect, that *ground occupied under a mistaken belief is necessarily a hostile possession*. Other states follow the rule laid down in Iowa. Under the same facts the decision would be that the period of adverse possession would not begin to run until the mistake was discovered by the one encroaching. The *intention* of the party who took it and occupied the ground was the controlling factor. The intention could not arise until the mistake was discovered: *Warren v. Collier*, 559 S.W. 2d 927 (Ark. 1978).

Visible possession

Possession must be visible. This requirement would preclude adverse possession to coal where the entrance took place beneath the surface and the entry was not readily noticeable to the owner or the public at large.

Distinct possession

The final requirement is that the possession of a claimant must be distinct. He cannot establish his claim to the ground unless he has laid claim to and exercised control over a definite piece of ground which can be sharply defined. He must exercise *exclusive* occupancy over it. Joint occupation would not satisfy the requirements.

Exceptions

The statute will not run against a remainderman until the termination of a pre-cedent estate such as a life tenant. One owner in common could not claim adverse title against a co-owner: *Iverson v. Iverson, et al*, 213 N.W. 2d 708 (S.D. 1973). Neither will the statute run against the state nor against land owned by the United States Government, nor against any land used for a public purpose.

Property held in a proprietary capacity can be diverted to adverse possession: *Srejack v. City of Baltimore*, 313 A. 2d 843 (Md. 1974). In 1860 a railroad purchased a narrow strip of land, 700 feet in length by 75 feet in width. When the railroad attempted to make use of the land in 1911, it was found to be in possession of one Jones. An ejectment action was brought to recover possession. In the trial of the case, the plaintiff railroad showed a *paper* title (deed) to the land in question. The defendant, in reply, set up a claim of the title by adverse possession in himself and his predecessors for more than 21 years. The pivotal question was whether title to land purchased by a railroad company outside its right of way for future railroad purposes can be acquired by adverse possession. Ordinarily, land used by a railroad as a right of way and for public purposes cannot be the subject of title by adverse possession. The same would be true insofar as land similarly used by any public utility. It is not true, however, where the land lies outside of the right of way. The railroad could not be heard to say, more than 40 years after the purchase, that it bought the land intending some day to use it for railroad purposes, but had not ac-

tively exercised this use. It was significant too, that the land in dispute was acquired by purchase rather than in the exercise of the company's right of eminent domain. The fact of condemnation, that is through eminent domain, indicates a public use, whereas in the case of a purchase, it indicates nothing and establishes nothing but title in the purchaser.¹

Present-day significance

Where a person has complied with the adverse possession requirements, he obtains valid title to the land so occupied. While he has no deed to his property, yet he can give a deed to another. He can compel a purchaser from him to accept his deed. His rights and privileges differ in no respect from that of an ordinary owner.

Adverse possession has contemporary significance through many cases where fences, markers and buildings have been improperly located and the mistake not discovered for the period specified in the statute. Where the statutory period has expired, the claimant's subsequent abandonment of the property would not defeat his ownership unless some new occupier took over and maintained his occupation, in turn, for the necessary period.

Easements by prescription

An easement, such as a walk or right of way, can also be acquired by adverse use. It must be hostile in its inception in order to found a claim by adverse use. This is known as easement by prescription and the general rules of adverse possession apply. To acquire prescriptive rights, the use must be open and notorious: *Dickinson v. Pike*, 201 S.E. 2d 897 (N.C. 1974). Long, continued, uninterrupted use of roadway over farm land, creates an easement by prescription: *George v. Dickinson*, 504 S.W. 2d 658 (Mo. App. 1974). A *permissive* use is not *adverse* and cannot ripen into an easement by prescription: *Fisher v. Grinsbergs*, 252 N.W. 2d 619 (Neb. 1977); *Pitts v. Roberts*, 562 P. 2d 231 (Utah 1977); *Union Hills Cemetery Ass'n. v. Camp Zoe, Inc.*, 547 S.W. 2d 196 (Mo. App. 1977).

Establishment of an easement by prescription requires use of the easement in such a way as to constitute "some actual invasion or infringement of the right to the owner of the subservient property for the prescribed time: *Shultz v. Atkins*, 554 P. 2d 205 (Utah 1976).

In *Flynn v. Korsack*, 175 N.E. 2d 397 (Mass. 1961), the court held that the plaintiff had acquired the right to use a driveway between adjoining properties by prescription. The defendants were ordered to remove a chain link fence and all other obstructions in the driveway. The same ruling was made in the case of *Whytock v. Green*, 383 P. 2d 628 (Okla. 1963). In *Stewart v. Bittle*, 370 S.W. 2d 132 (Ark. 1963), a fence between two properties for more than 30 years was held to establish the boundary line.

It is sometimes difficult to determine whether the land itself has been acquired adversely, or merely a right of way over it. The owner of the land, in order to prevent the easement, must take adequate measures to prohibit the unlicensed use of his property. If a physical barrier is not effectual, application to court for injunctive relief should be made. Notice or threat of legal proceedings will not defeat the statute.

Thus, it may be seen that title to real estate may be acquired through descent (by will), through purchase (by deed), and through occupation (by adverse possession). Title to real estate may also be acquired through the involuntary act of the owner (by eminent domain).

¹ Delaware Lackawanna R.R. v. Tobyhanna Co., 228 Pa. 487.

Restrictive Covenants, Easements, Zoning

A COVENANT is generally defined as an agreement between two or more persons, entered into by deed, whereby one of the parties promises the performance or nonperformance of certain acts or that a given state of things does or does not exist. Covenants may arise by implication of law, or from the conduct of the parties. They may be divided into two classes, personal covenants and restrictive covenants or covenants running with the land.

Restrictive covenants

Restrictions in a deed, as to limitations on the use of the property conveyed, have been in existence for a very long time. The restriction must be reasonable and it must not violate public policy. Restrictions have been employed to restrict type of building and/or to limit the use. Restrictive covenants have been productive of much litigation.

Restrictive covenants are not favored in the law. They are strictly construed and every doubt is resolved against the existence of the restriction.

Rather, the law favors the free and unrestricted use of property: *Weber v. Les Petite Academies*, 548 S.W. 2d. 847 (Mo. App. 1976). Any slight acquiescence in a breach will be construed as a waiver of the forfeiture.

Restrictions may arise by (1) express covenants, or (2) by implication (a) from the language of the deed, or (b) from the conduct of the parties: *Witt v. Sternwehr Development Co.*, 400 Pa. 609 (1960).

Restrictive covenants, as the expression is generally understood, are covenants running with the land. They are sometimes called "negative" covenants. They may be created in a number of ways. First, the limitations on the use of land may be explicitly set forth in the deed instrument. Second, the restrictions may be contained in a separate written instrument recorded or determined from a printed plan of the proposed development of the property. Third, restrictive covenants may be brought into existence by estoppel through oral representations alone. Thus, where an owner sells part of a subdivision tract under representations that his entire plan is restricted to the same extent, he thereby restricts use of remaining portion of his land to that extent: *Burgess v. Putnam*, 464 S.W. 2d 698 (Tex. Civ. App. 1971).

The owner of a tract of land divided into lots sometimes imposes restrictions on some of the lots as sold. Such restrictions are not to be defeated merely because similar restrictions are not imposed upon the remainder of the lots. Where an owner of lots conveys one of them by a deed containing building restrictions with a covenant that he will impose the same restrictions in the deeds for the remainder of the lots, the deed is recorded, and he subsequently conveys the remaining lots by deed without such restrictions, his later grantee is bound by the terms of the deed to the former grantee, although he has no actual notice of such terms. In examining the record he is bound to read the whole of the former deed and if he fails to do so, he is affected by notice of all that it contains. In reading the deed he will thus have

notice of the restrictions affecting all of the lots: *Hunt v. Collo*, 317 A. 2d. 545 (Del. 1974).

It is a well-recognized principle of law that every owner of land has the right to restrain its use by his grantees and to limit its appropriation to purposes which would not in any way impair or lessen the value of that portion which he retains. Restrictions will be enforced by a court of equity unless they are against public policy. They are enforceable, if reasonable, commensurate with the quality and character of the development. Where a tract of land is conveyed to a person with restrictions and he afterwards subdivides the land and conveys the several lots to third persons *without* restrictions, his several grantees or their purchasers would have no right to enforce, *inter se* (among themselves), the restrictions in the deed from their common grantor. Where the restrictions are common to all the lot purchasers, each has a right to enforce the covenants and enjoin their violation. When a man sells lots in a plan with a 25-foot building line, the restriction is mutual to the extent that any lot owner may enjoin the violation of the building line restriction by any other lot owner: *Beech Mountain Property Owners Ass'n. v. Current*, 240 S.E. 2d 503 (N.C. App. 1978).

A personal covenant is one binding upon the original party (covenantor) only, and when he dies, or disposes of the property, the restriction is at an end.

Non-use, no matter for what period of time, will not, per se, extinguish an easement: *Toms v. Settipane*, 317 A. 2d. 467 (Conn. 1973).

Restriction requirements

1. The language of a restriction must be clear as to its meaning. If ambiguous, it will be stricken down, for the courts are ever vigilant to protect the free alienation of property. Restrictions are strictly construed against persons seeking to enforce them and all doubts are resolved in favor of natural rights. All doubts must be resolved against the restriction and in favor of a free and unrestricted use of the property. Where the restriction limited an owner to one dwelling house upon a lot, the erection of a duplex dwelling was held not to be a violation. However, a restriction for the erection of a private dwelling house would prohibit the erection of an apartment building housing a number of families. In the term "a private dwelling" the word "dwelling" restricts the character of building by eliminating all buildings for business or commercial purposes, such as stores, garages, warehouses, factories and the like. The word "private" further excludes buildings of a public character, such as hotels, dormitories, and apartment houses. A motion picture theatre was held not to violate a restriction against any building for "offensive occupation."

2. It is necessary to ascertain the *intention* of the grantor in order to determine whether the restriction is for the personal benefit or protection of the grantor or runs with the land. Where Jones owns tracts 1 and 2, and sells tract 2 to Brown, reserving a right of way across the tract sold, the covenant would be personal to Jones alone and upon Jones' death or sale of tract 1 by him, the restriction would cease. However, if Jones reserved the right of way to himself, *his heirs and assigns*, the language used would clearly indicate an intention to create the right of way over tract 2 in favor of tract 1, regardless of the ownership of the latter. In this example, tract 2 would be the *servient tenement*, the tract upon which the burden or privilege is imposed, and tract 1 would be the *dominant tenement*, the tract to which the privilege attaches. Any subsequent owner of tract 1 could enjoy the right of way.

3. Restrictions should be limited as to time—20, 30, or 50 years. If not so limited, the restriction would be perpetual and could become ineffectual due to resistless evolution effecting a radical change in the character of the neighborhood. The restriction would be tempered to conform to the “change of neighborhood,” even before the time limit has expired.

4. Care should be taken in ascertaining how the restriction is to operate. Prohibiting an erection of a commercial structure will not operate to prevent the *use* of a residence for a commercial purpose. In order to prevent erection *or* use, the restriction clause should read:

That no building or said lot, or any hereafter erected, shall be erected for or *used* or *occupied* for business, trade, commerce, manufacturing, or for any offensive or malodorous occupation, or be used for any purpose other than that of a private dwelling house with private garage: *Jones v. Park Lane Home for Convalescents*, 120 A. 2d 535 (Pa. 1956).

5. The restriction must not be contrary to public policy. The courts have uniformly held that a prohibition by municipal *ordinance* effecting a racial restriction violates the Constitution and is invalid.

In the case of *Albino v. Pacific First Federal Savings & Loan Association*, 479 P. 2d 760 (Ore. 1971), all deeds in the subdivision prohibited all buildings except “a private dwelling house.” An owner of two vacant lots sought to build an eight-family garden type apartment building. He established that other apartment buildings were in the vicinity and a ball park had been erected across the road. A tremendous amount of traffic resulted. As a result, the city had changed the zone from single family to garden apartments.

The court held that the radical change of conditions in the area neutralized the deed restrictions.

Deed restrictions in a development provided that no temporary nor unsightly structures were permitted; also, anything offensive to a high class residential district was prohibited. An action was brought against the defendants, who moved their house trailer on a lot they had purchased in the plan. The court held that “temporary structure” included a house trailer or mobile home; *McBride v. Behrman*, 272 N.E. 2d 181 (Ohio 1971).

A subdivision developer told purchasers of lots that only one-family homes could be erected. A number of lots were sold and single family residences were constructed. The deeds contained no such restriction. Later, the developer decided to permit buyers to use the lots for trailer homes. Some of the original purchasers objected and brought an injunction action. The court held that oral testimony was admissible as the representations by the promoter constituted frauds. Relief was granted: *Burgess v. Putnam*, 464 S.W. 2d 698 (Tex. Civ. App. 1971); *Foro v. Deutsch*, 320 N.Y. 2d 778 (Sup. Ct. 1971).

Where all the lots in a plan have been sold, the developer has no right to enjoin the violation of a restrictive covenant in the subdivision: *Kent v. Koch*, 333 P. 2d 411 (Cal. App. 1958).

Enforcement

When considering relief by injunction against the breach of a restrictive covenant, the courts require due diligence upon the part of the plaintiff, and delay upon his part (laches) will ordinarily defeat his application; for instance, where an objector has permitted a violation to proceed without objection and the lot owner has incurred considerable expense in the building construction. Equity aids the vigilant and not the “sleeping.” A person violating the restriction himself could not enjoin a

similar violation by another owner. Where Jones converted a part of his residence into a store, in violation of a restrictive covenant, he would not succeed in enjoining Smith from using his building for a commercial purpose. Injunction is an extraordinary or special remedy addressed to the equity side of the court and "he who comes into equity must do so with clean hands." Injunction may be invoked or a building ordered to be torn down where a warning has not been heeded. Building restrictions are considered warranties rather than conditions. A breach generally gives rise to injunction or money damages rather than a forfeiture of the estate to the grantor as would be true if the restriction were construed as a condition. Release of restrictive covenants is not effective unless all persons who own property in restricted subdivisions join in release: *Amason et al., v. Woodman et al.*, 498 S.W. 2d 142 (Texas 1973). Restrictive covenants, being in derogation of the right of unrestricted use of property, will be strictly construed, and will not be extended by implication to anything not clearly and expressly prohibited by their plain terms: *Shea v. Sargent*, 499 S.W. 2d 871 (Tenn. 1973). However, other states observe "the modern trend," to the effect that restrictive covenants are not strictly construed because they are said to protect the land owner and the public rather than restrict the use of land: *Wallace v. St. Clair*, 127 S.E. 2d 742 (W. Va. 1962).

Easements

A restrictive covenant constitutes an incorporeal right. It is similar to an easement. An easement is defined as a liberty, privilege, or advantage which one proprietor may have in the lands of another, without profit in a material, physical sense. Easements may be classified as appurtenant—running with the land; and in gross—or personal to the individual owner, in the nature of a license. The best known easement is perhaps a right of way over another man's land. In origin, easements may be express or implied. Express easements are those which have been set forth in a deed or some supplementary writing, whereas the others arise as the result of a legal implication. With the opening up of the West, many situations arose where highways and boundaries between properties were laid down improperly, and, as a consequence, a man trespassed over other property in order to reach the main road. As a result, the courts invented the doctrine of implied easements, and this rule has been adopted throughout the country so that at the present time it is practically general.

Grant of an easement is the grant of a use and not a grant of title: *Park County Rod & Gun Club v. Dept. of Highways*, 517 P. 2d 352 (Mont. 1973).

Easement by necessity

The law is well settled that where property conveyed is so situated that access to it cannot be had except by passing over the remaining land of the grantor, then the grantee is entitled to an easement by necessity over the lands of the grantor: *Soltis v. Miller*, 444 Pa. 357 (1971).

An easement by necessity is an exception to the general rule that an easement can only be created by deed, by prescription, or by adverse use for the statutory period: *Camp v. Milain*, 277 So. 2d 95 (Ala. 1973). The prerequisites are that the properties in controversy must come from a *common* source; and, secondly, there must be a reasonable necessity for the creation of the easement, e.g., it must be the only practical means of ingress and egress: *Burrow v. Miller*, 340 So. 2d 779 (Ala. 1976).

In the case of *Porter v. Griffith*, 543 P. 2d 138 (Ariz. App. 1975), an easement by implication was denied, as there had been no common grantor. This use is not limited by the manner in which it was used at the time it was created, but to vary with reasonable needs, present and future.

An easement may be implied where the circumstances surrounding the case are such as to make such a course desirable in the interest of public policy. The implication under which the easement is created, however, must be based upon *necessity* and not mere *convenience*. It is difficult to lay down any general rule by which to judge the existence of necessity. The courts will judge that an easement is necessary in most cases where the facts show that an original arrangement, which is clearly in the nature of an easement, has existed and where the disturbance of this arrangement could be inequitable to the party claiming the right.

In *Oliver v. Ernel*, 178 S.E. 2d 393 (N.C. 1971), an easement by necessity was granted against a grantor, where the land conveyed was land-locked, and grantee has no other access to a public road: *Soltis v. Miller*, 444 Pa. 357 (1971).

Appurtenant Easements

One of the most important things to remember concerning appurtenant easements is that they are not personal grants which die with the death of the person in whose favor they were made, or become extinguished when he parts with the property. They belong, instead, to the land, and pass with it to all subsequent holders, unless excepted by the express provisions of the deed. It is also important to remember that the right of an easement belongs to all and every part of the land. The holder of any portion of the original tract, no matter how small a tract, is entitled to all the rights that he would possess if he owned the entire tract. The courts will permit the burden to be made greater where the additional servitude is due to the more complete development of the dominant tenement. The right of way which one farm possesses over another may be used very seldom so long as the tract is used for farming; but, when the ground is subdivided into lots, it is readily seen that the burden of the servient tenement is considerably increased; however, so long as the use is confined to those who are holders of any part of the original property, the courts will not intervene to release the servient tenement of any part of the extra burden. This is so because the easement right belongs to the property and to limit the full use and development of the property would be contrary to public policy: *Garam v. Bender*, 55 A. 2d 353 (Pa. 1947); *Fristoe v. Drapeau*, 215 P. 2d 729 (Cal. 1950); *Ragonaud v. Dimaggio*, 249 N.Y.S. 2d 705 (1964); *Westland Nursing Home, Inc. v. Benson*, 517 P. 2d 862 (Colo. App. 1974).

Implied easement

Another example of an implied easement is where the owner of two properties constructs a building upon one lot, and a cornice, roof, or spouting encroaches over the other parcel. If he sells the unimproved property to another, the purchaser takes it subject to the open, visible, permanent, and continuous servitude which has been placed upon it by the encroachment, and he cannot later demand the removal of the encroachment. It is necessary, however, in order to create an implied easement in favor of the improved property, to show that the advantage which is claimed satisfies these requirements: *open, visible, permanent, and continuous*. In other words, it is such a burden as could readily be seen by the intending purchaser before he has paid for the property and he thus takes the property subject to the existing encroachment. However, if the dwelling with the encroaching cornice

burned down or was destroyed, the owner would not be permitted to rebuild so as to continue the encroachment. He would be required to contain the *entire* building within his own property limits. It should be noted, too, that an implied easement cannot be extended to include land.

In the case of *Rice v. Reich et al.*, 186 N.W. 2d 269 (Wis. 1971), the purchaser sued a broker and owner to recover a \$1,000 earnest money deposit, because of an existing driveway (easement) which served the subject property and the adjoining property. The executed agreement of sale required the seller to convey the property "free and clear of all liens and encumbrances." In view of the court's finding that the buyers knew of the existence of the joint driveway at the time they executed the contract of sale, they could not recover. An easement which is fully known to a purchaser before he makes his contract of purchase, or which is so open, obvious and notorious that he must have known of it, is not an incumbrance within the meaning of such a covenant: *Taxman v. McMahan*, 124 N.W. 2d 68 (Wis. 1963). In the latter case, the court held that a party wall constitutes "an encumbrance" which will render the title to real estate defective, where there is a covenant to maintain and rebuild the wall.

The doctrine of implied easement will not be enlarged to deprive an owner of the right of use or possession of his property. Circumstances may temper this principle, as where the case involves a *slight* encroachment of a building upon or near the dividing line, or where the use of the encroachment upon land is claimed as a real necessity, the deprivation of which would cause a severe hardship.

Where easement in deeds used the term, "ingress and egress," without limitation, the easement was designed to serve a specific piece of property, rather than being personal to the grantor: *Westland Nursing Home, Inc. v. Benson*, 517 P. 2d 862 (Colo. App. 1974).

Finally, it should be remembered that the easement does not in any way give its beneficiary title to the property which is subservient to it. It simply gives the right of use and not of possession. The owner of the servient tract can sell the land over which his neighbor has certain rights, in the same way as though those rights did not exist; and if, by mutual agreement, the easement is cancelled, it is not necessary that the strip which has been subject to the servitude be deeded back to the owner of the servient tenement since he already possesses title to it. An easement is an encumbrance and a purchaser could refuse to accept a deed subject to a right of way or other privilege unless the agreement of sale provided that the conveyance was to be subject to the right.

Party wall

A party wall is a structure for the common benefit and convenience of both tenements that it separates. Generally, a party wall is a wall erected and standing on a line between two estates or tenements owned by different persons for the use in common of both estates or tenements, and each owner owns in severalty as much of the wall as stands on his own land, subject to the easement of the other owner of support for his building from the entire wall and of the maintenance of the wall as a party wall. Both owners are liable equally for repairs and maintenance of the common wall.

Easement in gross

An easement in gross is one created for the benefit of the owner of a particular property (dominant tenement). When the person for whom the easement was cre-

ated dies, or sells the property, an easement in gross terminates and is at end. An easement in gross is not transferrable: *DeShon v. Parker*, 361 N.E. 2d 457 (Ohio App. 1974). For example, Stone permits his neighbor, Baker, to use Stone's driveway, as it affords Baker a more convenient approach to his garage in the rear. If Baker sells his property to Chase, Stone could prevent Chase, the new owner, from continuing the use of the driveway.

In the case of *Bunn v. Offutt*, S.E. 2d 522 (Va. 1976), the Court held that a right to use the swimming pool on the property sold, which had existed in favor of the grantor, did not pass with the later transfer of the property, as it was an easement, in gross.

The distinction between an easement in gross and an appurtenant easement is that the in gross clause creating the easement fails to include the essential words, "his heirs and assigns."

Usufructory right in water

Property rights in water and in the use and enjoyment of it are well established as rights in the soil over which it flows. But water, from its very nature, does not readily adapt itself to possession as does land so that a property right in water is really only a usufructory right, a right of use. If the natural channel of a watercourse lies along or through the lands of different owners, the water therein is the common and indivisible property of all. They have equal privileges to it in all respects insofar as a right to its use for domestic or business purposes. An upper owner, whose land is traversed by the stream, cannot so exercise his use as to deprive the lower owners of a similar enjoyment. That is to say, he cannot divert the water, dam it up, or interfere with its natural flow. If, however, in the ordinary, normal, and reasonable exercise of his right to use, the result is to prevent a subjacent owner of a similar use, the lower owner has no redress. This is the common law rule of the doctrine of riparian rights. A mining company would be liable if pollution of the stream results from an artificial diversion of the stream.

An upper property owner cannot interfere with the natural drainage of surface water so as to increase the area of flooding to the land of lower owners. Such a continuing nuisance will be enjoined: *Glassman v. Weldin Farms*, 359 A. 2d 669 (Del. Ch. 1976).

In *Tyler v. Vanelst*, 512 P. 2d 760 (Wash. App. 1973), the defendants were working with a bulldozer to clear brush which caused the waters of Cozy Nook Creek to be muddied upstream from plaintiff's diversion system. The mud, silt and debris dislodged thereby caused problems with plaintiff's water system. The defendants were enjoined from such interference.

In a number of the western states the common law rule has been rejected, where, by reason of the arid condition of the land, the necessities of the people compel a change in the rule. The policy there permits a diversion of the stream water from its natural course and protects the *first* appropriation as a recognized proprietary right. Three elements must exist for a valid appropriation: (1) intent to appropriate the water to some beneficial use existing at the time or contemplated in the future; (2) an actual diversion from the natural channel by means of a ditch, canal, or other conduit; and (3) the practical application of the water within a reasonable time to some useful purpose. The appropriation, intention, the use, and the beneficial purposes are the test by which the right to divert a stream is determined.

The question of liability is frequently raised relative to the overflow of water from one property on to another. The law is clearly established that the first owner may not obstruct a natural channel for the flow of the water or a channel that has acquired the character of an *easement*, nor may he gather surface water into a body and discharge it upon adjoining land. He may not act negligently in directing the flow so as to do unnecessary damage to others. But so far as he acts upon his right to the enjoyment of his own property, any accidental damage to a neighbor is, in the eyes of the law, *damnum absque injuria* (injury without wrong). In other words the injured party has no legal remedy.

Zoning

The law is well established that every property owner has a right to use his or her property in any way, subject only to the restraint necessary to secure the public welfare: *First National Bank of Des Plaines v. Cook County*, 360 N.E. 2d. 1377 (Ill. App. 1977).

Closely allied to building restrictions, which result from voluntary agreement of the parties, are zoning restrictions: *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365.

A zoning ordinance is a deprivation of rights of private ownership. It must be strictly construed in favor of the property owner. However, it should be enforced when its provisions are clear, unambiguous and no valid legal grounds exist to prevent its enforcement: *City of Oakdale v. Benoit*, 342 So. 2d. 691 (La. 1977).

We have already discussed the limitations upon a property owner's free use of property through the medium of building restrictions contained in deeds and by special agreement. They are designed to insure the uniform character of a development. Further restrictions upon the use of property may arise through zoning regulation. Zoning is the creation by law of districts in which regulations, differing in various districts, prohibit injurious or unsuitable structures and uses of structures and lands. Zoning, if reasonably exercised, represents a valid exercise of the police power of the state. The zoning, however, is not done by the state but by the municipality in pursuance of an enabling act of the state, permitting the municipalities within the state to adopt zoning codes or ordinances. The general purpose of zoning laws requires that such regulations shall be made in accordance with a comprehensive plan—designed to lessen congestion in the streets, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population or traffic flow. Closely identified with zoning is the creation of planning commissions by municipalities. They regulate the overall development of a community. Zoning and planning must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of lands and buildings and encouraging the most appropriate use of land throughout the particular political subdivision. Regulation under the guise of zoning, which results in the destruction or confiscation of property, must necessarily fail. Courts, in the interests of justice and equity, may pertinently inquire into the valid or invalid exercise of the police power, keeping in mind whether the challenged ordinance is necessary *for the public health, safety, morals, or general welfare*. The reasonableness of the ordinance is for judicial determination. It is not the duty of the courts to fix district lines or to usurp the place of zoning authorities, but the work of such authorities is subject to review and, if its application is found, upon judicial examination, to be

unreasonable and confiscatory, to be set aside. The United States Supreme Court has declared that: "the inclusion of private land in a residential district under a zoning ordinance with resulting inhibition of the use for business and industrial buildings to the serious damage of the owner, violates the Fourteenth Amendment, if the health, safety, convenience, or general welfare of the part of the city affected will not be promoted thereby."

Zoning ordinances will be held inoperative when based upon purely aesthetic considerations. They must have a substantial relation to the public good.¹ Civic-minded real estate operators and brokers are in accord that reasonable zoning regulation is essential to maintain and promote the attractive character of a city or town. To permit the unbridled development or use of land in accordance with the selfish interest of an individual owner is bound to be reflected in the depreciated value of surrounding properties. Legislation in the form of "spot" zoning so that the zone of one particular property is changed is not favored but may be allowed under special circumstances.²

In the case of *Hackett v. Gale*, 179 A. 2d 451, the New Hampshire Supreme Court decided in 1962 that a real estate broker could not maintain an office in his home as an *accessory* use of it as a residence. The court said "real estate brokerage has been held to be a business rather than a profession" (citing cases). (Note: This case was decided in 1962.)

Nonconforming use

Zoning laws have no application to the location of properties or their use prior to the enactment of the zoning measure: *Norton Realty & Loan Co., Inc. v. Gainesville*, 224 Ga. 166 (1968); *Walworth County v. Hartwell*, 214 N.W. 2d 288 (Wis. 1974). This is known as a nonconforming use.³ A zoning ordinance is not an encumbrance within the meaning of the term, which would enable a purchaser to renounce his agreement of sale. However, a title insurance policy will except any existing zoning ordinance from the title insurance contract. A broker's responsibility to the prospective purchaser or lessee should require him to ascertain the use to which the property is to be put and whether the proposed use conforms to zoning provisions. Zoning ordinances excluding the use of property by certain races are clearly illegal. Where a zoning ordinance is in force, a property owner who desires to erect a structure must first obtain a building permit from the city building inspector or department. If the proposed building meets the requirements of the building code of the municipality and is not violative of any zoning restrictions, the desired permit will be issued and posted upon the property. Where the use contemplated does not adhere to the zone set up for the particular location, the permit will be refused. An appeal by any aggrieved party may then be taken to the board of adjustment, or as it is sometimes called, the zoning board. The board has power to hear and decide appeals where it is alleged there is error in the decision of an administrative official, to hear and decide special exceptions to the terms of the ordinance, and to authorize, in special cases, a variance from the terms of the zoning ordinance. The board can take cognizance of special conditions where a literal enforcement of the ordinance provisions will result in unnecessary hardship. Further appeal to court is permitted, and ordinarily an appeal from the decision of the board operates to stay the proceedings upon the decision appealed, but the court

¹ *Parkridge v. City of Seattle*, 573 P. 2d 359 (Wash. 1978).

² *Christopher v. Mathens*, 362 Mo. 242 (1951); *Tennison v. Shomette*, 379 A.2d 187 (Md. App. 1977).

³ *Boise City v. Blaser*, 572 P.2d 892 (Idaho 1977).

may, on application, grant a restraining order, upon cause shown and upon the petitioner posting a bond as in other cases seeking injunctive relief.

In the case of *Nickola v. Township of Grand Blanc*, 209 N.W. 2d 803 (Mich. 1973), the plaintiffs bought the subject property for the purpose of building and maintaining a mobile home park. The site was zoned single family residences other than mobile homes. The plaintiffs relied upon the representations by the township supervisor that rezoning for a trailer park would be no problem. A two-year delay ensued upon plaintiff's petition to build. One reason was it was anticipated that part of the land would be condemned for highway purposes, and thus the damages would be considerably increased. Another reason was the lack of sanitary sewers. Plaintiffs were led to believe that when these two factors no longer existed, rezoning would be granted. The court said:

... prospective purchasers and their counsel (should) be aware of the general unenforceability of such claimed representations. It would be well for purchasers to heed the ancient adage of *caveat emptor* in this area of law, and *get their rezoning problems adjudicated before purchase and not after.* (emphasis supplied)

The court added, however, that in the instant case:

... we cannot possibly see how a mobile home park vis-a-vis single family residence can possibly affect Grand Blanc Township's morals, health or safety on the land in question.

The ordinance was held invalid.

It frequently happens that an owner will convert a three-story dwelling into apartments on the upper floors, in violation of an ordinance, permitting only one-family residences. A broker aware of this situation, in selling such a property to a buyer for investment, is doing the buyer a disservice, since the buyer could be compelled to restore the building to its original use.

Even where a property is converted into a multiple family use, *before* the ordinance was passed, should the property be destroyed by fire, he could not rebuild for multiple family occupancy: *Goldfarb v. Dietz*, 506 P. 2d 1322 (Wash. App. 1973).

In the United States Supreme Court case of *Village of Belle Terre et al v. Bruce Boraas et al* (No. 73-191-April 1, 1974), a village ordinance which restricted land use to one-family dwellings and defined the word "family" to mean one or more persons related by blood, adoption, or marriage, or not more than two unrelated persons, living and cooking together as a single-housekeeping unit, was challenged as unconstitutional. The owner of a house was cited by the village, who had leased the property to six unrelated college students. The Court held that the ordinance was reasonable and not arbitrary and bears "a rational relationship to a (permissible) state objective." The ordinance was upheld as a valid land-use legislation addressed to family needs.

U.S. Supreme Court upholds referendum approval

In the case of *City of East Lake, et al. v. Forest City Enterprises, Inc.*, 96 S. Ct. 2358, L. Ed. 2d 132 (1976), the city Planning Commission had recommended to the City Council a zoning change proposed by a landowner. The city Charter was amended to require that any proposed changes in land use agreed to by the City Council should be approved by a 55 per cent vote in a referendum. The amendment was challenged as an unconstitutional delegation of legislative power to the people. It was defeated by popular vote. In a law suit, the Ohio Supreme Court held the new charter provision invalid. The United States Supreme Court, how-

ever, reversed the decision and remanded the case. In an opinion by Chief Justice Burger, expressing the views of six members of the Court, it was held that the due process rights of the landowner were not violated by the amendment to the city charter since (1) the referendum decision could not properly be characterized as a delegation of power, and (2) the referendum rezoning decision was properly reserved to the people under the Ohio Constitution.

Exclusionary Zoning

Another important United States Supreme Court case holds that zoning laws are not exclusionary in effect, if they are not enacted with an *intention* to discriminate against low income groups and were not motivated by racial discrimination: *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 97 S. Ct. 555 (1977).

A zoning ordinance that provided for apartment construction in only 80 acres out of the 11,589 acres in the township, was held invalid, as exclusionary: *Township of Willistown v. Chesterdale Farms, Inc.*, 341 A. 2d 466 (Pa. 1975). The Court held that the township did not provide for a "fair share" of the township acreage for apartment construction.

Zoning classifications

Municipalities follow different zoning classes, depending upon their requirements and the size and area of the municipality. All ordinances have classifications of residential, industrial, and commercial zones. A higher use classification is usually permissible in a lower use classification. In urban centers, industrial classification is divided into heavy and light industrial zones. Even under the lowest classification of heavy industrial zone, certain uses are sometimes prohibited. Prohibited uses would include abattoirs, manufacture of animal fertilizer, gun powder or explosive manufacture or storage, garbage disposal plants, or stockyards. Any of these operations would be offensive or dangerous to the population if carried on within the city limits. A dwelling, except living quarters for the use of watchmen employed upon the premises, could also be excluded. A commercial district can also be separated into classifications to take care of special needs in a neighborhood retail district as well as the downtown commercial zone. Residential zones are often classified into several districts. In a class "A" residence district, for example, one-family or more dwellings, including apartment buildings, are permitted, as well as educational or charitable institutions, churches, greenhouses, or schools. In a "B" residence district, multiple family (more than two) or apartment buildings would be prohibited, while in a "C" residential district, only a single family dwelling use might be permitted. A large part of zoning ordinances is devoted to height limitations and front, rear, and side yard areas.

A situation arises where a buyer purchases a tract of land on the strength of an existing zone classification, obtains a building permit, and makes expenditures, to find that the zoning code has been amended to prohibit his intended use of the tract. This situation was before the Court in the case of *Gulf Oil Co. v. Fairview Township Board of Supervisors*, 438 Pa. 457 (1970). The court laid down the following rule quoted in *Penn Township v. Yecko Bros.*, 217 at 2d A. 171 (Pa. 1966):

A property owner who is able to demonstrate (1) that he has obtained a valid building permit under the old zoning ordinance, (2) that he had obtained it in good faith (without "racing"), to get it before a proposed change is made in the zoning ordinance, and (3) that in good

faith he spent money or incurred liabilities in reliance on his building permit has acquired a vested right and need not conform with the zoning ordinance as changed.

Dedication

Dedication is the setting aside of private property for public use and acceptance by the municipality of the tract for public use. It may be intended as a parklet, a sports area or a beach. It may be intended for the use of the public at large, or, in a subdivision, it may be intended for the use of the owners in the subdivision. If intended for public use and accepted by the municipality, the owner is exempt from taxes and other liability. As an alternative to dedication, the tract may be deeded to the municipality.

In order to constitute a dedication of a public road by implication, there must exist clear and unequivocal intention to do so by the land owner *and* acceptance by the public: *Hudson v. Gaines*, 501 S.W. 2d 734 (Tex. 1973). Where property is acquired through *private* dedication, the deed is strictly construed: *Big Sur Properties v. Mott*, 132 Cal. Rptr. 835 (1976). Courts guard zealously the restrictive covenants in donations of property for public use.

The offer of dedication may be withdrawn or revoked until the offer has been accepted by donee, or estoppel has arisen by intervening rights. Payment of taxes upon the subject land was not deemed to effect a revocation of dedication offer: *Smith v. Black*, 547 S.W. 2d 947 (Tenn. App. 1976).

Street abandonment

Kenyon Road, Altoona, Pennsylvania, had been dedicated to and accepted by the City of Altoona. Later, the city passed an ordinance vacating the street but reserving to itself an easement extending its length and width for utilities. The question involved was whether the created easement and reservation in the ordinance was valid. The Pennsylvania Commonwealth Court, in the case of *Baird v. City of Altoona*, 361 A. 2d 458 (Pa. 1976), held that once the street was abandoned, the city could not "tack on" a further use. The easement was held invalid.

Eminent Domain

EMINENT DOMAIN may be defined as the power of the state to take private property for public use. Under the 5th Amendment to the Constitution of the United States, the Federal Government is prohibited from taking private property for public use without just compensation and, under the “due process” clause of the 14th Amendment, the prohibition is extended to the several states. The right is expressly given to the state by constitutional provision. Even though the state constitution contained no such provision, the right could, nevertheless, be exercised by the state as eminent domain is an inherent attribute of state sovereignty. The state government is the supreme power in the state, and private rights are held under such supreme power and may be said to represent an indulgence by the sovereign power. The right of eminent domain exists not only in favor of the state but also for the benefit of any municipal subdivision of the state. In fact, any public corporation or any private corporation vested with a public use may exercise this extraordinary power when necessary for the public good. Appropriation of private property does not mean confiscation of such land, for the owner is entitled to fair and just compensation for the taking. Ordinarily, a public utility embarking upon a program of expansion, or a municipality in the development of a needed civic project, will endeavor to purchase the required properties for what is considered a fair consideration price. It is only when private bargaining fails that resort is made to condemnation through eminent domain proceedings. The court, upon failure of the interested parties to agree upon the sale price or to accept an award of court-appointed viewers, will then determine a just price for the property in question.

It should be emphasized that the taking of *private* property must be for a *public* use.

In an early case, *Pittsburgh W & K.R. Co.*, 8 S.E. 453 (W.Va.), a railroad company sought to condemn a right of way across a steel mill, which would afford it access to a competing steel mill's land. Since it was primarily for the benefit of the second steel mill and for profit of the railroad company, eminent domain was refused.

If the right to eminent domain did not exist, a single obstructionist property owner in a key position for a planned improvement could successfully stay the betterment and progress of a whole community with his refusal to sell or his unwillingness to sell at any but a prohibitive price.

In *State of Hawaii v. Midsiff*, 516 P. 2d 1250 (1973), the court said:

Just compensation, in a non-realignment case, may be summed up by the formula: Just compensation = (value of the land taken plus severance damages) minus special benefits (3 Nichols Eminent Domain Sec. 8.6206 at 90 3d ed. 1965). Each of these three elements of just compensation should be independent of the others.

Frequently, a land owner will receive a higher price through court condemnation proceedings than was offered to him for a voluntary conveyance of the same land. Just compensation is held to be the fair market value of the land and the improvements thereon. Where, however, only a part of the owner's tract is con-

demned, differences and difficulties arise as to the amount of compensation. Certainly, the claimant is entitled to the fair market value of the part taken and it is equally well accepted that he is entitled, as an element of damage, to the depreciation in value, if any, caused by the improvement to the land retained by him. These two elements constitute his highest possible damage.

Where only part of property is taken, measure of severance damage is difference between market value of remainder before and after the taking: *Defnet Land and Dev. Co. v. State*, ex re Herman 480 P. 2d 1013 (Ariz. App. 1971).

Award of \$93,500 for taking 21 acres out of tract consisting of 196.32 acres, part of which was in flood plain and part of which was hilly and in an industrial area, together with taking of right of direct access to highway, was fair and did not evidence bias, passion, or prejudice: *State Highway Commission v. Crooks*, 282 So. 2d 232 (Miss. 1973).

Factors to consider in a total taking of a dwelling under eminent domain are comparative data and reproduction: *State of Louisiana v. Carmouche*, 155 So. 2d 451 (La. 1963).

In an eminent domain proceedings, the burden is upon the property owner to establish that public use is the direct and proximate cause of the damage complained of, and not merely such as is possible, as may be conceived by the imagination, or as merely affects the feelings of the property owner: *Frank v. Mercer County*, 186 N.W. 2d 439 (N.D. 1971); 4 Nichols on Eminent Domain Sec. 14.24.

Unsuitability of farm property caused by construction of transmission lines was held to be a proper element of damage: *Missouri Public Service Co. v. Garrison*, 454 S.W. 2d 628 (Mo. App. 1969).

Existence of valuable deposits including sand, gravel, and lime stone is a proper element in ascertaining value of land in an eminent domain proceedings: *Seaboard Coast Line R.R. v. Harrelson*, 202 S.E. 2d 1 (S.C. 1974).

Owners were not entitled, as an element of compensation, to the increase in value of property prior to taking and attributable to proposed improvement: *Pozin v. State Dept. of Transportation*, 281 So. 2d 73 (Fla. App. 1973). The enhancement of the value of the property caused by the proposed improvement cannot be considered. However, a limitation to the foregoing rule, as stated in case of *Levit v. State Dept. of Transportation*, 248 So. 2d 542 (Fla. App. 1971), is, as follows:

Such enhanced value is generally peculiar only to land lying adjacent to the improvement and within close proximity to the interchange exits and entrances leading to and from intersecting roads and highways.

Damage caused by municipality in changing level of street from its natural level to an established grade is compensable: *Behlman v. City of Florissant*, 548 S.W. 2d. 619 (Mo. App. 1977).

Loss of liquor license is not compensable in condemnation proceeding, as such license is not "property" which is protected by constitutional guarantees. It is only a limited permit to engage in an enterprise which, otherwise, would be unlawful: *Restaurants, Inc. v. City of Wilmington*, 274 A. 2d 137 (Del. 1971).

Losses of intended uses of property to arise in the future are not compensable condemnation losses: *Public Service Co. of Indiana v. Morgan County Rural Elec. Membership Corp.*, 360 N.E. 2d. 1022 (Ind. App. 1977).

One is not entitled to compensation for loss of business due to taking of land, since business profits are so remote from market value of land on which business is located as not to be proper indication of value of land: *Kayo Oil Co. v. State*, 340 So. 2d 756 (Ala. 1976).

However, in a case of first impression, *State of Alaska v. Hammer*, 550 P. 2d 820 (Alaska 1976), the Court held such loss of profits was compensable, and not *damnum absque injuria* (injury without damages).

Generally, a condemnee is not entitled to compensation for personality used in land taken (e.g., restaurant equipment). However, depreciation in value of personality, in addition to physical damage, should be allowed: *State of Alaska v. Ness*, 516 P. 2d 1212 (1973).

Where condemnee suffered no loss of direct access to existing road, which abutted property not taken, she could claim no damages as a result of dead-ending of road one-half mile east of her. This necessitated circuitry of travel for 800 feet: *Dept. of Public Works, etc. v. Greenwell*, 359 N.E. 2d 780 (Ill. 1977).

Benefits assessed against the taking

Should not the owner, by the same logic, be taxed for the benefit resulting to the remaining tract because of the improvement? The cases on this question are not uniform throughout the country. Sound logic would seem to dictate that *special benefits* received by the owner should be charged against the price paid to him. Lewis, on Eminent Domain, summarizes the law on benefits as follows (Sec. 687):

The law in regard to benefits is now pretty well settled in every State, either by the decisions of its courts, or by its statutes, or its constitution. While different and conflicting rules prevail in the different States under precisely the same constitutional provisions, it is evident that there can be but one absolutely correct rule. In taking private property for public use, the State acts rightfully and not as a wrongdoer. It guarantees just compensation and nothing more. In arriving at what is just compensation, the matter is to be viewed in the same light as though the State had bargained with the owner for a portion of his land and had agreed to make him just compensation therefor. It is self-evident that, where a part of a tract is taken, the just compensation cannot be determined without considering the manner in which the part is taken, the purpose for which it is taken, and the effect of the taking upon that which remains. All the authorities concede this so far as damages to the remainder are concerned, and the justice of so doing may be taken for granted. But what justice is there in considering the effect insofar only as it produces damage? If a railroad is constructed through a farm and drains a valuable spring whereby the remainder is depreciated five hundred dollars, it is conceded that just compensation must include this five hundred dollars. But if, instead of draining a valuable spring, it drains a marshy tract so as to make it worth five hundred dollars more for actual use, the same sense of justice requires that this five hundred dollars of benefits should be considered.

It is true, of course, that the entire municipality profits and benefits by the improvement of streets and other public service and indirectly, the entire tax-paying population participates in the maintenance of the original improvement. But where, for example, a street which serves only a limited number of properties is changed from a dirt street to one of brick, it is fair that only the immediate properties benefited should be assessed for the improvement.

Urban renewal is a substantial state interest that can justify taking property dedicated to religious use: *Pillar of Fire v. Denver Urban Renewal Authority*, 509 P. 2d 1250 (Colo. 1973). In short, church property is private property which can be taken by eminent domain for permanent public use.

A property owner is entitled to severable damages, if it is shown that the property taken is part of a larger tract, which has been adversely affected by the taking: *Babinec v. State*, 512 P. 2d 563 (Alaska 1973).

Trees and shrubbery are not to be appraised independently of the land, unless they have some unique value that such items are valued in addition to the fair mar-

ket value of the condemned land: *State Dept. of Highways v. Miltenberger*, 344 So. 2d 705 (La. App. 1977).

In recent years, special authorities were created by the Congress and the state legislative bodies for erecting public housing projects. These projects, intended to supply badly needed housing and to improve the standard of living for low income groups, have had an important effect upon the economic and social well-being of a large segment of our industrial population. In the fulfillment of the housing program, blighted areas have been condemned and destroyed and new structures erected. In this development, it is often necessary to resort to condemnation of an entire zone or district. This is known as *zone condemnation* and is the only practical and effective method of clearing slums. Zone condemnation is for a specific purpose. Even in public condemnation the cost is great, but the benefits of better health of the inhabitants and the elimination of crime are readily commensurate with the cost involved. The United States Government in the exercise of its broad war powers has, in the interests of flood control, condemned extensive areas throughout the country. Today state legislatures have created public authorities with the right of condemnation for housing, sanitation, parking, and public utility purposes.

Excess condemnation

Excess condemnation, as the name implies, is the taking of land in larger measure than actually necessary for the improvement proper. Special constitutional authority is necessary for exercising this extraordinary right. The earlier court decisions have held that statutes for excess condemnation, enacted under the general constitutional provision, were invalid. Recent social philosophy may well influence the judicial view that public use, liberally interpreted, may often permit excess condemnation. A street is laid out and land on each side of the proposed street is taken in excess of the area actually needed to confine the street. The control of the excess part by the municipality, whether in the case of a street, park, or other development, insures the usefulness of the improvement and is conducive to the better channelling of municipal growth. Better city planning is bound to ensue.

Title taken under the right of eminent domain ordinarily carries with it a fee simple title to the land, so that the condemnor has as absolute a title as if it were acquired by purchase. But land taken for roads is usually a base fee. It is governed by statute.

Under a base, or qualified fee, when the use for which the property has been taken is abandoned, title to it reverts to the original owner or his heirs. In other takings of land, a fee simple title is acquired.

Value of raw land is subdivided land

Generally, the value of a farm land on the outskirts of a growing town is worth less than the value of such land, converted into a subdivision, on a lot basis. Of course, the subdivider must have taken forward steps to make the change by the time of the taking. Incidents of such transformation would include such items as engineering, promotion of sales, advertising, plotting, and recording: *United States v. 147.47 Acres of Land*, 352 F. Supp. 1055 (Md./Pa. 1972).

Lessee's Right to Damages

Examination of a commercial lease should determine what understanding exists, under the lease, in regard to a taking of the leased property under eminent domain.

If the lease does not foreclose the lessee's right to damages, all elements affecting the value of the leasehold must be determined.

In the case of *Barnini et al. v. Sun Oil Co.*, 283 A. 2d 158 (Conn. 1971), the plaintiff's property was taken for highway purposes. The property was under lease to the defendant for a service station, with option to renew. The court said:

The value of the lease is properly arrived at in the case of a complete taking by subtracting the rent provided for under the lease, from the fair market value of the lease. In a determination of what this amount should be, all elements legitimately affecting the value of the lease should be considered.

A lessee may be entitled to the reasonable market value of the unexpired period of the lease, unless fixtures upon premises are obsolete at the time of the taking: *State Highway Commission v. Samborski*, 463 S.W. 2d 896 (Mo. 1971).

Condemnation award between landlord and tenant: *County of Gennepin v. Holt*, 297 N.W. 2d 723 (Minn. 1973).

However, the right of a lessee to compensation for property taken may be waived or contracted away by terms of lease: *Wessels v. State of Alaska*, 562 P. 2d 1042 (Alaska 1977).

Questions on Deeds

1. Q. Allen conveyed a 200-acre farm to Bell in 1954, “reserving to himself, his heirs or assigns, a certain right of way over the rear of the farm.” Allen never used the right of way, and upon his death in 1970, his farm, which adjoined the farm sold to Bell, was inherited by the son, John Allen. In 1978, John sold the inherited farm to Chester. When Chester attempted to use the right of way, he was stopped by Bell. Chester filed a suit for an injunction. Decide.
 - A. Chester will win. Mere non-use of an easement, created by deed, however long continued, does not create an abandonment.
2. Q. A grantor executed a deed for property to the Secretary of the Department of Housing and Urban Redevelopment. The deed was delivered to the grantor’s attorney “to be held by him.” The property was destroyed by fire, and the next day the deed was recorded, presumably by the grantor’s attorney. In a suit to determine who is entitled to the insurance proceeds, who will win?
 - A. The grantor, since he was the owner of the property at the time of the fire. Delivery to the *grantor’s* attorney did not constitute delivery to the grantee.
3. Q. Discuss the form or nature of an encumbrance.
 - A. An encumbrance can be in the nature of a tax lien or mortgage, which affects the *title*, or it may be in the nature of an easement or restriction, which affects the physical condition of the property.
4. Q. A grantor executed a deed, but did not deliver it to the grantee. He told several neighbors and tradesmen that he had sold the farm. He referred several customers for farm produce to the grantee, as owner. Is the absence of delivery of deed, in this case, fatal to transfer of title?
 - A. No. The statements that he had made to so many persons that he had sold the farm, coupled with the executed deed to the grantee, showed an *intention* to transfer title: *Scroggins v. Roper*, 548 P. 2d. 779 (Tex. Civ. App. 1977).
5. Q. The premises of a deed contain the names of the parties, consideration, description, the “to have and to hold” clause, and the recital clause. What element has been omitted?
 - A. The operative clause (granting clause).
6. Q. In most states that have a deed transfer tax law, is it paid by the *seller*?
 - A. Yes.
7. Q. What words are necessary to create an appurtenant easement rather than an easement in gross?
 - A. The words “his, (her, or their) heirs and assigns.”
8. Q. Earl Holmes deeded his farm property to his son, Jon Holmes, on February 15, 1937. The deed was never recorded. Earl Holmes died in 1949 and Jon died on May 16, 1976, leaving a will in which he devised the farm to his wife, Mary. Mary desires to sell the farm to Henry Sims. A question of title now arises, because the Earl Holmes deed was never recorded. Can Mary give good title to Sims?
 - A. Yes, in the absence of any recorded judgment or mortgage against the prior owners.
9. Q. A light industrial use of property was established in 1959. In 1962, a zoning ordinance was enacted, changing the use zone to single or multiple family dwellings. In 1977, the building was destroyed by fire. In 1978, the owner decides to rebuild and

use the factory. He applies to the city for a building permit, which is refused. He sues. Decide.

- A. In favor of the municipality, on the authority of *Goldfarb v. Dietz*, 506 P. 2d 1322 (Wash. App. 1973). The non-conforming use is barred.
10. Q. A certain subdivision contains a restrictive covenant, prohibiting structures of a temporary character. A purchaser bought a lot and attempted to install a mobile home upon a concrete block foundation, resting on three steel I-beams. The structure was 24 feet wide, 52 feet long, and contained 1,460 square feet of living room space. The subdivider objected. Was this mobile home in violation of the restriction?
 - A. Yes. The house was not actually attached to the foundation and could be moved. Accordingly, it was a temporary structure.
11. Q. What do you understand by air rights?
 - A. The ownership of the rights to use, occupy or control the air space over a specified property.
12. Q. What is the basic test for determining whether an article is realty or personalty?
 - A. The *intention*, with which the article was affixed to the realty, considered in the light of what is fair and reasonable under the surrounding circumstances.
13. Q. Is it necessary for the grantee to sign the deed?
 - A. No; acceptance of the deed by the grantee is sufficient.
14. Q. What is meant by a curative statute in reference to deeds?
 - A. An act of the legislature to validate defective acknowledgments.
15. Q. A deed is written with a life interest to Adam, and upon Adam's death, the property vests in Bennett. What is Bennett's interest in the property called?
 - A. A remainderman.
16. Q. Which is preferable, a general warranty deed or a special warranty deed?
 - A. A general warranty, because the grantor agrees to protect the grantee against the world; whereas, in a special warranty deed, the grantor limits his protection to anyone claiming under him or through him.
17. Q. What kind of a warranty of title does the grantor make in a quit claim deed?
 - A. None.
18. Q. What does real property include?
 - A. Lands, tenements and hereditaments.
19. Q. What is meant by tenements and hereditaments?
 - A. Tenements include land and anything affixed permanently to the land such as a building. Hereditaments include lands, tenements and things of an incorporeal nature, such as a right of way.
20. Q. Do all titles emanate by patent from the U. S. government ?
 - A. No. In the 13 original states, title originated from the Proprietor (under grants from the King of England) or from the sovereign states.
21. Q. Under a fee simple deed, what is the legal concept of land which a purchaser acquires?
 - A. The surface land, to an indefinite extent upwards and down to the center of the earth.
22. Q. How would you define a "property right" ?
 - A. The right to enjoy lands and chattels to the exclusion of all others.
23. Q. Into what two classes is property divided ?
 - A. Realty and personalty.
24. Q. Into what two classes can realty be divided ? Give examples.
 - A. Corporeal realty (lands and buildings); incorporeal realty (right of way; an easement).
25. Q. Name four ways by which good title to real estate may be acquired.
 - A. Deed, Will, Adverse Possession, Eminent Domain.
26. Q. What estate is of potentially indefinite duration and is fully transferable and inheritable?

- A. Fee simple.
27. Q. What is a deed ?
- A. A deed is a writing by which lands, tenements and hereditaments are conveyed, which writing is signed, sealed and delivered between the parties.
28. Q. What is meant by a merchantable title?
- A. A title free from any clouds or defects, which a buyer is bound to accept.
29. Q. Name four types of legal description of land.
- A. 1. Rectangular survey. 2. Metes and bounds. 3. Monuments. 4. Recorded map—lot and block number.
30. Q. What is a Warranty Deed ?
- A. It is a Bargain and Sale deed *with* covenants—that the grantor has a fee simple title, free from encumbrances, and that the grantor will forever warrant and defend the grantee against any claims.
31. Q. Name at least three classifications of estates.
- A. Inheritance, life, years, at will.
32. Q. When real estate is held in the husband's name, why is it necessary for the wife to join with the husband in deeding the property to another?
- A. In order to extinguish her dower right.
33. Q. What is meant by a Government Patent ?
- A. Original and initial conveyance of real property from the United States Government to individuals, or from a state to an individual.
34. Q. What defect is there in the following property description:
- “Property next to Marvel Gasoline Station, City limits, Andrews County, Texas, official records in Recorder's Office of Andrews County, also known as the 500 block on Main Street in the City.”
- A. The description is fatally defective because the name of the city does not appear.
35. Q. What are the requirements usually necessary in determining whether an article is a fixture?
- A. 1. Actual physical annexation to the realty.
2. Application or adaptation to the use or purpose to which the realty is devoted.
3. An intention on the part of the person making the annexation to make a permanent accession to the land.
36. Q. Who are the parties to a deed ?
- A. The grantor and the grantee. The grantor is the one who sells the property and signs the deed. The grantee is the purchaser, who receives the deed.
37. Q. Real Estate ownership is said to consist of a “bundle of legal rights.” Name six “rights.”
- A. 1. To lease. 2. To sell. 3. To will. 4. To regain possession at end of lease—reversion. 5. to build thereon—destroy improvements—maintain—control use within the law. 6. To mortgage.
38. Q. What is a quit claim deed ?
- A. A deed used to clear clouds upon the title. The operative words are “remise, release, and quit claim.” There is no warranty of title in this form of deed. A wife who has not joined in a warranty deed may sign a quit claim deed in order to bar her dower interest in the property.
39. Q. What does the word “title” mean when referring to property?
- A. Title is the evidence of ownership in land.
40. Q. Why is it necessary for a deed to be in writing?
- A. Statute of frauds passed in England in 1676 in order to prevent unscrupulous persons from swearing under oath that property had been deeded or leased verbally for a long period of time at a ridiculously low rental. It requires contracts for the sale and transfer of real estate to be in writing. The statute of frauds has been adopted in the various states.
41. Q. For what purposes is a special warranty deed most generally used ?
- A. It is the usual form of conveying a tax title. It is also used by fiduciaries or trustees

- in conveying title to real estate.
42. Q. What are the principal types of deeds used in real property transfers?
A. General Warranty Bargain and Sale, Special Warranty, Quit Claim.
 43. Q. Name five kinds of entries or instruments found in an "abstract of title."
A. 1. Deeds. 2. Mortgages. 3. Releases. 4. Foreclosures. 5. Delinquent Taxes.
 44. Q. What are the two most common methods of title closing?
A. Escrow and delivery of deed.
 45. Q. Is a date essential to the validity of a deed?
A. No. It indicates the time when the deed was delivered. It is only prima facie evidence: i.e., appears to be sufficient to establish the time of delivery but may be rebutted by stronger proof.
 46. Q. Is a deed dated on Sunday void?
A. Not if delivered on a week day.
 47. Q. Is consideration necessary in a deed?
A. Yes. Good or valuable consideration.
 48. Q. What is good consideration?
A. Good consideration arises from love and affection and has no pecuniary value.
 49. Q. What is understood by a valuable consideration?
A. Money or its equivalent measurable in monetary terms.
 50. Q. Is a \$1.00, or nominal, consideration valid?
A. Yes. Courts do not inquire into the adequacy or inadequacy of the consideration.
 51. Q. What parties have limited or qualified right to contract?
A. Infants, insane persons, corporations, and aliens.
 52. Q. Is a deed from husband to a wife valid where the husband has been made the defendant in a lawsuit involving a substantial sum of money?
A. No. Any conveyance made with intent to disturb, delay, hinder, or defraud creditors may be set aside as fraudulent.
 53. Q. Is a joint estate the same as an estate by the entireties?
A. An estate by the entireties, which may be held only by husband and wife, enjoys advantages over a joint tenancy. In some states, as in Nebraska, husband and wife hold as joint tenants, similar to an estate by the entireties.
 54. Q. What are "appurtenances" in a deed?
A. Rights which pass as incidental to the premises; anything necessary to the enjoyment of the property. Land ordinarily cannot pass as appurtenant to land, but a right in land may.
 55. Q. What are a husband's rights in his wife's property called?
A. Curtesy.
 56. Q. Is a deed by a married woman for her own property valid, void, or voidable?
A. Valid in most states, but void in others, unless she has been declared a "feme sole."
 57. Q. Who is a "feme sole"?
A. A single woman. A married woman may be declared a feme sole by court decree where her husband has deserted her or is a drunkard, or there is other good cause.
 58. Q. What is meant by "estate by the entireties"?
A. The ownership of property by husband and wife. The tenancy exists only in favor of husband and wife.
 59. Q. What are the advantages of an estate by the entireties?
A.
 1. Upon death of one party the property forthwith vests in the surviving spouse.
 2. No probate or other court proceedings are necessary.
 3. Not subject to state inheritance tax.
 4. A judgment against one spouse will not be a lien.
 60. Q. What is the main disadvantage of such an estate?
A. Unless both parties join in a deed, court action is necessary to partition the estate.
 61. Q. What is the difference between "joint tenancy" and "tenancy in common"?
A. In joint tenancy, where one of the parties dies, the property vests in the surviving party or parties. In a tenancy in common, each of whom is considered as being

- possessed of the whole of an undivided part, upon death of one, his interest goes to his heirs.
62. Q. Brother and sister are purchasing a residence. Brother is a widower, with two children, and sister is a widow with no children. What kind of a deed should issue if she is to have a $\frac{1}{3}$ interest and he is to have a $\frac{2}{3}$ interest?
- A. A deed as tenants in common.
63. Q. What are the purposes of the acknowledgment?
- A. 1. The deed will be accepted as prima facie evidence in any court proceedings.
2. The deed may be recorded.
64. Q. Is it necessary for the grantee to acknowledge or sign the deed?
- A. No.
65. Q. Jones conveys certain real estate to Brown and Smith as joint tenants, and not as tenants in common. Subsequently, Brown dies, and Smith claims property. Brown's son claims title to the same property. Who will win?
- A. Smith, the survivor. The deed to Brown and Smith expressly created a joint tenancy.
66. Q. Adams conveys certain real estate to Black, Carr, and Dean as tenants in common. Black later dies, and in a contest among Carr, Dean, and Black's widow for Black's share in the property, who will win?
- A. The widow. The conveyance to Black, Carr, and Dean established a tenancy in common.
67. Q. White conveys property to Smith and Jones as joint tenants. Can Smith sell his interest to Green? If so, would Green then become a joint owner with Jones?
- A. Smith can sell or alienate his interest in the property to Green. Green does not become a joint owner with Jones, but Green and Jones now hold the property as tenants in common. (Alabama, Indiana, North Carolina, Pennsylvania, Texas.)
68. Q. Various covenants designed to limit, restrict or prohibit the use, improvement or occupancy of real estate are sometimes incorporated in deeds to real estate. Name at least three different types.
- A. Buildings must be of a certain height; certain minimum cost; set back from street; they cannot be used for commercial purposes; liquor cannot be sold upon the premises.
- *
69. Q. What is a tax deed?
- A. A deed issued for property which has been sold for taxes.
70. Q. Is a title that is acquired by purchase at a treasurer's sale for unpaid municipal taxes, good and marketable?
- A. No, the owner still has right of redemption.
71. Q. Name three types of encumbrance which might cloud the title to real estate.
- A. Unpaid taxes, judgments, a right of way.
72. Q. What is the meaning of the words "more or less" in many deed descriptions?
- A. Intended to indicate that a slight variation in dimensions of the tract would not void the contract.
73. Q. What is a tax title?
- A. Title by which one owns land purchased at a tax sale.
74. Q. Where are deeds to real estate officially recorded?
- A. In the Office of the Recorder of Deeds, or Register of Deeds.
75. Q. Does an abstract of title guarantee a clear title?
- A. No; it merely gives a summary as to the conditions of the title.
76. Q. What is the purpose of a correction deed?
- A. A correction deed, often called a deed of conformation, is used to correct an error in a deed. This is usually done with a quit claim deed containing explanations.
77. Q. Is it correct to state that a lease on a property being sold constitutes an encumbrance on that property?
- A. Yes.
78. Q. What are the dangers in not having a deed recorded promptly?

- A. The deed may be destroyed or lost; judgments may be entered against the previous owner, which would constitute a lien against the property; the previous owner might deed or mortgage the property to someone else, who, by recording his instrument promptly, would have priority.
79. Q. What is included in the execution of a deed ?
- A. The execution includes the signing, sealing, witnessing and acknowledgment of the instrument.
80. Q. Is it necessary for the grantor himself to sign the deed ?
- A. Good practice requires the grantor's personal signature, but a deed signed by another for the grantor in the grantor's presence and at his direction would be a sufficient compliance with the requirement for signature, if proved.
81. Q. If the grantor cannot write, how should the deed be signed ?
- A. The grantor should make his mark in the presence of witnesses and the grantor's name should then be appended by someone for him. The signature would appear "John (his X mark) Steele." There must be two witnesses to the mark.
82. Q. Can a grantor later repudiate a deed because he is illiterate and could not read the instrument ?
- A. No. The burden is upon the grantor to have someone read the deed to him, unless fraud has been practiced on the grantor.
83. Q. Can a husband and wife make a single acknowledgment of a deed ?
- A. In most states, yes. In Alabama, New Jersey, North Carolina, South Carolina and Texas, it is necessary to have separate acknowledgment of the wife.
84. Q. What information does the acknowledgment contain?
- A. The venue, place where the acknowledgment is taken (state and county); the name of the grantor and his marital status, as John Steele, single; the signature of the person taking the acknowledgment, his official capacity, expiration date of his office, and official seal.
85. Q. Must the grantors appear in person before the officer taking the acknowledgment?
- A. Yes. An acknowledgment should never be taken in absentia.
86. Q. Can a deed be executed by an agent under a power of attorney from the owner?
- A. Yes. The power of attorney, however, must be recorded.
87. Q. When should a proxy or power of attorney be used ?
- A. Only in rare cases and under special circumstances as when the grantor is uncertain as to his whereabouts at the time of closing the deal and does not want to execute the deed beforehand. The attorney-in-fact should be a person in whom the grantor reposes the highest trust and confidence.
88. Q. When does title to the property pass?
- A. When the deed is delivered to the grantee or his agent.
89. Q. What kinds of delivery are there?
- A. 1. Delivery absolute, where the deed is handed over to the purchaser without any conditions.
2. Delivery in escrow, where the deed is delivered to a third person until the performance of some act or condition by one of the parties.
90. Q. Arthur delivers a deed in escrow to Cox until certain items in the title are cleared up. The purchaser, Bell, turns over the consideration price at the same time to the escrow agent, Cox. Two days later Arthur notifies Cox to return Bell's money to Bell and to return the deed to Arthur. Must Cox comply with these instructions?
- A. No. Once the deed is delivered to the escrow agent and the condition of delivery is specified, the grantor is powerless to recall it.
91. Q. Suppose that Abbot delivers a deed to Cooper in escrow for Brown, to be handed over to Brown once he has paid Cooper the balance of the consideration price. Later in the day, Brown visits Cooper's office during Cooper's absence and sees the deed on Cooper's desk. Brown takes the deed and records it. Does Brown get good title? Suppose that after recording the deed Brown conveys the property to Quinn for a valuable consideration. Will Quinn obtain a valid title?

- A. Brown will not obtain good title because of his fraudulent act, and Abbot could have the deed stricken. However, Quinn, an innocent purchaser for value, would obtain good title, for he had no notice of Brown's fraud, assuming, of course, that the transfer from Brown to Quinn was made before Abbot took any legal proceedings to set Brown's deed aside.
92. Q. Anthony executes a deed to Burger and delivers it to Conway, to be delivered to Burger upon the death of Anthony. Will Burger get good title upon the death of Anthony?
- A. Yes. If the title does not pass until Anthony's death, it cannot do so at the death. This would seem to defeat Anthony's purpose. But the law comes to the rescue and considers the passing of title as "relating back to the date of direct delivery," which was, of course, prior to Anthony's death. This is known as the doctrine of relation. When finally delivered to the grantee, it operates from the date of first delivery, which was prior to Anthony's death.
93. Q. Ash executes a deed to Burke and places it in his inside coat pocket. The coat is hung in Ash's cupboard. Ash is killed in an explosion that afternoon. The deed is intact. Does Burke obtain title to the real estate?
- A. No. The deed was not delivered.
94. Q. Jones executes a deed to Brown and Jones records it. Later Jones seeks to set the conveyance aside, claiming that there had been no delivery to Brown. Will he succeed?
- A. No. In cases like this, delivery is presumed from recording.
95. Q. Is it necessary to have the deed recorded?
- A. As concerns grantor and grantee, title passes upon delivery and it is not necessary to record it. However, in order to protect the grantee against a lien or a subsequent deed by the grantor for the same property, the law requires the grantee to record his deed. This constitutes constructive notice.
96. Q. Adams delivers a deed to Black on December 6, 1974, which Black records on January 21, 1975. Adams deeds the same property to Clark on January 14, 1975; Clark records his deed the same day. Who owns the property?
- A. Clark. The person who gets his deed on record first, providing he had no notice of a prior deed, is deemed the owner.
97. Q. Suppose that in the preceding case, Black took possession on December 6, 1974. Would the decision be the same?
- A. No. Clark would have notice of Black's ownership, and he would then be a purchaser with notice.
98. Q. Brown owns two adjoining tracts of land. He conveys one piece to Evans and reserves a right of way across the rear in order to reach a side street. Later he sells the other tract to Case. Subsequently, Evans and Case have differences, and Evans refuses to permit Case the use of the right of way across his land. Can Case enjoin Evans from interfering with his use?
- A. No. The original right was personal to Brown, and when Brown conveyed the property, the right was extinguished. If Brown had reserved the right to himself, "his heirs and assigns," Case would be successful.
99. Q. Williams owns two parcels of real estate. A house is built upon one tract, with the cornice encroaching upon the other. Williams sells the second tract to James. Nothing is mentioned in the deed about the encroachment. Later, James notifies Williams that he is trespassing by the encroachment and demands that he remove the objectionable cornice. Will James succeed?
- A. No. Williams has an implied easement in James's land to the extent of the encroachment. The condition was open, visible, continuous, and permanent at the time James purchased the property and accordingly, he takes it subject to the existing condition. If the house were destroyed by fire or other cause, Williams could not rebuild so as to continue the encroachment.
100. Q. What are the granting words or operative clauses used in a deed to pass a fee sim-

- ple title?
- A. Grant and convey.
101. Q. Smith's deed to a farm is made subject to a right of way in favor of Jones' farm. The Jones' farm, 12 years later, is subdivided into lots. The lot owners attempt to use the same right of way and Smith objects to the increase of use. Will Smith succeed?
- A. No. The right of way exists for the benefit of every part of Jones's farm and the increased use represents a normal and logical development of the farm.
102. Q. Adams, without Black's consent, uses a shortcut across Black's farm. From time to time, Black places an obstruction across the path, which Adams removes. The use, under these conditions, continues for more than 21 years. Black now erects a cable fence across the path and Adams takes legal action to prevent Black's interference with his use of the right of way. Who will win?
- A. Adams. In order to defeat the statute of adverse possession, Black's interference or objection must be effective. Since the barriers during the 21-year period were not effective in preventing the use, Adams will win. Black should have obtained a court decree enjoining the trespass.
103. Q. As used in legal descriptions of real estate, what is (a) a section, (b) a township, (c) a range, (d) the 5th Principal Meridian? Where is this meridian?
- A. Refer to definitions and text.
104. Q. What is the "Torrens system"?
- A. It is a system of land registration introduced in Australia by Sir Robert Torrens about 1858. It is a system for the registration of land titles whereby the state of the title, showing ownership and encumbrances, can be readily ascertained from an inspection of the "register of titles" without the necessity of a search of the public records. It is used to a modified extent in some states in this country.
105. Q. In 1960, an owner made a contract with the owner of an adjoining residence for the joint use of an automobile driveway, half of which lay on each lot. In 1975, the owner made a contract to sell and convey his lot free of all encumbrances. When the title was searched, the joint users' agreement, which had been recorded, came to light. Under such circumstances, would the buyer have had the right to refuse to go through with the deal?
- A. Yes. The joint driveway is an easement, constituting an encumbrance within the meaning of the term.
106. Q. Upon the closing of title to real property, where the purchaser, as part of the purchase price, gave a purchase money mortgage, the seller, upon receipt of said purchase money mortgage, and the buyer, upon the receipt of the deed, have each taken the respective two documents and placed them in a bank safe deposit vault for safekeeping. By doing so, have the two individuals committed anything detrimental to their interests with respect to the two documents? Why?
- A. Both grantor and grantee have taken an unwarranted risk. The mortgage and deed should be recorded so that the grantee will be protected against a subsequent deed or mortgage for the same property given by the grantor and so that the grantor will be protected against a subsequent mortgage or lien given or suffered by the grantee before the mortgage is recorded.
107. Q. Would you prefer a general warranty deed with merchantable title or a court deed?
- A. A general warranty deed with merchantable title. The court deed would not guarantee the title.
108. Q. Adams, residing in Dade County, Florida, owns a lot in Broward County. Adams asks where he must legally record the deed to his lot.
- A. Broward County. Recordation of the deed must be in the county where the property is located.
109. Q. Harris conveys certain real estate to his son, John, "for and during the grantee's life." What kind of an estate does John obtain?

- A. John obtains a *life estate* only.
110. Q. A deed is executed by Alfred Sims to the First Presbyterian Church, of which he is a member. The Church is not an incorporated body. Does the Church obtain good title to the property?
- A. No; the deed is void because the grantee is incapable of taking title to real estate.
111. Q. What is meant by a homestead?
- A. The homestead consists of the dwelling house in which the claimant resides, together with outbuildings, and the land on which the same are situated. Declaration of homestead must be filed in the Recorder's Office.
112. Q. What information must be given in the declaration filed?
- A. 1. A statement showing that the claimant is the head of a family.
2. If claimant is married, the name of the other spouse.
3. That claimant is residing on the premises and claims them as a homestead.
4. A full description of the premises.
5. An estimate of their actual cash value.
113. Q. What advantages accrue to homestead property?
- A. Such property is protected from execution and foreclosure sale against most creditors.
114. Q. What claims will not be defeated by a homestead?
- A. 1. Judgments which became liens before the declaration was recorded.
2. Mechanics' liens for work or materials furnished upon the premises.
3. Mortgages and trust deeds executed and acknowledged by husband and wife or by an unmarried owner.
4. Mortgages and trust deeds recorded before the declaration was recorded.
115. Q. How may a homestead be terminated?
- A. By a conveyance or by recorded instrument of abandonment.
116. Q. Does removal from the premises effect an abandonment of a homestead?
- A. No.
117. Q. Wherein does a sale of real estate differ from a sale of personal property?
- A. A sale of real estate is effected by a formal deed, duly signed, acknowledged, delivered, and recorded. A sale of personalty is effected by a bill of sale delivered to the purchaser.
118. Q. What federal income tax advantage do residents of community property states have?
- A. The husband's income may be divided equally between husband and wife for income tax purposes. The income tax law permits this division of income in all states which have community property.
119. Q. What is the difference between (1) an abstract of title, (2) a certificate of title, and (3) a title insurance policy?
- A. 1. An abstract of title is a document setting forth a brief synopsis of all matters of record affecting the title to the real estate in question.
2. A certificate of title gives the net result of the examination of title, showing the name of the owner and the encumbrances and defects of title as of the date of the certificate.
3. A title insurance policy insures the title in a given name, subject to noted exceptions and encumbrances listed in the policy, and renders the insurer liable to compensate the insured for loss arising from errors of search and legal interpretation, in an amount not exceeding that stated in the policy.
120. Q. What is the purpose of recording a deed?
- A. To give notice to the public of the transfer of title, thus protecting a subsequent purchaser or mortgagee from the same grantor.
121. Q. John Lake has been designated by William Gardner as his attorney in-fact. Indicate how Lake would sign a deed on behalf of Gardner.
- A. William Gardner (Seal)
By his attorney-in-fact,

- (x) The living room chandelier.
 - () The furnace shovel and poker.
 - () The living room lamp which is attached to a wall plug.
 - () The stair carpet.
 - () Awnings, unless specifically fitted to the dwelling.
134. Q. An electric light company has the right to erect its poles and run its lines along the rear five feet of a lot. What sort of a property right is this?
- A. An easement.
135. Q. There are a number of restrictions usually found in deeds to property in high class subdivisions. Name two of these and state the reason for such restriction.
- A. 1. Floor space restriction which determines minimum size house which can be built.
2. Price restriction which determines minimum amount which can be spent for dwelling.
136. Q. Lawrence conveys the coal under his farm to the Acme Coal Company. Finney purchases the farm and lays out a subdivision. Later, Finney sells a lot to Jordan giving a general warranty deed and no mention is made of the coal conveyance. Jordan builds and subsequently attempts to sell to Reed who refuses to complete the deal because of the coal conveyance. Does Jordan have any claim against Finney?
- A. Yes, since Finney gave Jordan a general warranty deed, he warranted that title was absolute and complete and guaranteed the purchaser against all claimants.
137. Q. Watson conveys certain real estate to Lee "subject to coal and mining rights conveyed by prior deeds of record." Later, damage is caused to the house because of a surface cave-in due to the removal of the coal by the Ajax Coal Company. Does Lee have any action for damages?
- A. He would not have any right of action against Watson because the deed to Lee was made subject to coal mining rights previously conveyed. It depends upon the language of the deed to the coal company whether he would have any cause of action against the Ajax Coal Company. The general rule of law is that all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community. Thus, failure of the mineral owner to render support to the surface will make him liable to the surface owner. However, the United States Supreme Court has held (260 U. S. 392) that the owner may relinquish, by deed or agreement, his right to surface support. Most coal deeds now provide, "WITHOUT LIABILITY UNDER ANY CIRCUMSTANCES WHATEVER FOR DAMAGES DONE TO THE SURFACE OF SAID LOT OR TO THE IMPROVEMENTS NOW ERECTED OR HEREAFTER TO BE ERECTED THEREON." A state statute may abrogate this clause.
138. Q. William McKee and Fred Starr are partners doing business as McKee and Starr. They have acquired real estate for the firm purposes with partnership funds. Subsequently, the property is sold to Lowell Baker. Both McKee and Starr are married. Is it necessary for their wives to join in the deed?
- A. No. Since the real estate was partnership property and held *as such*, the joinder of the wives is unnecessary.
139. Q. A tract of land was settled by Miller who lived on it for nine consecutive years. Due to conditions of health, he moved away for a six-year period. He then moved back to the same land and occupied it for six years. At the end of this period, or twenty-one years from his first occupancy, he claimed title by adverse possession. Will he succeed?
- A. No. The possession must be continuous. Since he moved away for six years, the continuity has been broken, which is fatal to his claim. His adverse occupation has continued only for the last six years.
140. Q. Dolan owns certain real estate, upon which there is a mortgage held by Walsh. The mortgage is in default and in lieu of foreclosure, the mortgagee agrees to ac-

cept a voluntary deed from Dolan.

1. Does Walsh get a good title?
2. Is the mortgage extinguished?

A. 1. Walsh gets no better title than Dolan has. If there are judgments against Dolan, they will continue as liens against the property.
 2. The deed, per se, does not extinguish the mortgage. The deed should recite the *intention* of the parties—that the mortgage is cancelled.

141. Q. A deed of farm land describes the land as running from a certain defined point nine hundred feet to the Revolutionary chestnut tree. The tree in question has long been identified and known in the neighborhood as such. The actual distance to this tree is 987 feet. Is the purchaser entitled to 987 feet or 900 feet?

A. 987 feet. In reconciling distances in a deed with distances shown by monuments upon the ground, the latter govern.

142. Q. Where a single woman owns real estate and sells the property after marriage, how should the deed refer to her as the grantor?

A. "Mary Steele, formerly Mary Sone." The notarial acknowledgment should read the same way.

143. Q. Is an oral deed, accompanied by occupancy by buyer, valid?

A. No.

144. Q. If a property is encumbered by a mortgage, would it be a merchantable title?

A. No.

145. Q. What is "escheat" in reference to lands?

A. The lapsing or reverting of land to the state, which occurs usually for failure of heirs or lack of legal ownership.

146. Q. What type of deed is preferable from the buyer's standpoint?

A. A general warranty deed, because the grantor warrants to protect the grantee against any claimant.

147. Q. Local planning commissions have an area of jurisdiction, in addition to the most common ones—land use through zoning, community subdivision, design and flood control. Name at least three of these other fields.

A. 1. Recreation. 2. Streets and highways. 3. Sewage disposal and drainage.

148. Q. Name four different ways in which an owner of real estate may have secured title to it.

A. Purchase, gift, inheritance, adverse possession.

149. Q. If a warranty deed has been executed and delivered to a purchaser, is it necessary to have it recorded in order to make it a valid conveyance?

A. No.

150. Q. What is the danger in not recording a deed promptly?

A. Judgments may be filed against previous owner; also, previous owner may sell or mortgage the property to someone else.

151. Q. May a life estate be sold?

A. Yes; purchaser would hold during the life of his grantor (per autre vie).

152. Q. Who is the legal owner of a piece of property when the deed to it is delivered but not recorded?

A. The grantee (purchaser).

153. Q. What is a condominium?

A. An individual ownership of a single unit in a multi-family structure.

154. Q. How does it differ from ownership in a co-operative apartment?

A. A condominium can be bought, sold or mortgaged and is taxed separately. In a co-op, the owner usually purchases stock in the corporation and holds possession under a long-term, renewable lease.

155. Q. Smith conveys one-half of a tract of land to Ellis, reserving to himself a right of way across the rear ten feet. On April 24, 1978, Smith sells his one-half to Lawrence. Later Ellis attempts to restrain Lawrence from using the right of way. Will he succeed?

- A. Yes. The right of way was reserved to Smith as a personal covenant. To permit Lawrence to use it, the reservation should have been made to Smith, "his heirs and assigns."
156. Q. Is it necessary to affix United States Revenue Stamps to a deed ?
- A. No. Not since January 1, 1968.
157. Q. Is there a difference in making a deed "under and subject to a mortgage" and in making a deed "under and subject to a mortgage, which the grantee assumes and agrees to pay" ?
- A. Yes. In the first clause, the grantee does not *personally* assume any obligation to pay the debt; in the second clause, he does and he would be personally liable for any deficiency judgment, i.e., the difference between the amount of the debt and the amount realized at a foreclosure sale.
158. Q. A deed is signed in blank by the owner and left with a broker, with the request that broker make the best deal possible. The broker sells the property to a friend at a price lower than the market price. Is the deed valid ?
- A. Yes. The deed is good unless there was some "connivance" between broker and buyer. The broker can be held accountable to the owner for his lack of good faith.
159. Q. At a closing, a seller refuses to pay a broker's commission and demands that the deal be closed. Can the closing officer ignore the broker's claim and disburse the funds?
- A. Yes; the broker has only a collateral claim in the deal between buyer and seller.
160. Q. One year after a closing, an unpaid special assessment of \$540 is discovered. Is the broker or owner responsible to the buyer, or neither?
- A. The owner is responsible to the buyer for the assessment, and costs, under a general warranty deed.
161. Q. What are five governmental limitations on land?
- A. Police power, eminent domain, zoning, taxation and escheat.
162. Q. What is meant by venue?
- A. This is the acknowledgement of the deed, stating the state and county where the deed is acknowledged.
163. Q. Suppose the property is located in Dade County, Florida, and is acknowledged in Cook County, Illinois, what formality is required?
- A. A certificate of the clerk of courts that the notary public is authorized to take acknowledgments, is usually required.
164. Q. Can a United States Consul in Liverpool, England, take an acknowledgment to a deed for property in the United States?
- A. Yes.
165. Q. What precaution should be taken in any acknowledgment as to the date?
- A. Care should be taken that the date in the acknowledgment is not earlier than in the deed.
166. Q. Allen signs an agreement of sale to sell a lot, zoned residential, to Barnes, who desires to erect a dwelling. Before the deal is closed, the city changes the zone to commercial. Barnes seeks to rescind the deal. Will he succeed?
- A. No. Under the doctrine of equitable conversion, Barnes assumed the risk of change in zoning.
167. Q. Does an eight-unit townhouse complex violate a deed restriction which read "owners and occupiers of certain lots shall not at any time hereafter erect more than one dwelling house"?
- A. The appellate court held that the restriction was valid and prohibited the eight-unit complex, since it would have the appearance and character of the eight party wall houses and could not be considered "one dwelling house": *Shapiro v. Levin*, 223 Pa. Super. 535 (1973).
168. Q. James MacDonald and Margaret MacDonald, his wife, acquired title to their residence, by the entirety, in 1965. In 1970, Margaret obtained an absolute divorce from James. The same parties re-married in 1973 and James died on October 2,

1974. The widow, Margaret, claims title to the entire property. Irene, a daughter of James by a previous marriage, claims a one-half interest in the property. Decide.
- A. Irene is entitled to a one-half interest. Upon divorce in 1972, Margaret and James became the owners of the subject property as tenants in common, and each then owned a one-half interest. The subsequent re-marriage did not convert the ownership into an estate by the entireties. To create an estate by the entireties a *new* deed would have been necessary to James and Margaret, his wife.
169. Q. Certain tests are applied by the Courts in determining whether a fixture is realty or personalty. Name three and give examples.
- A. 1. *Annexation* to the realty: a built-in burglar alarm system.
 2. *Adaptability* or application as to its use in the premises: specially fitted storm doors or screens.
 3. *Intention* to make the chattel a permanent part of the freehold: hot water tank and radiators.
170. Q. Which of the above would carry the greatest weight with a Court?
- A. Number 3.
171. Q. Why is it necessary to have an examination of title to a particular property?
- A. In order to ascertain whether the present owner received good title from his predecessor in title, and on back through a long series of previous owners, for the same reason.
172. Q. Is an examination of title, and an opinion thereon, the same as title insurance?
- A. No. While the examiner of a title is responsible for any negligent error, that person may not be financially solvent, in order to recover damages sustained. Damages could be recovered because of an error by a title company.
173. Q. What do you understand by ownership in fee simple?
- A. It is the highest and most complete ownership in real estate.
174. Q. Under a fee simple deed, what is the legal concept of extent of ownership that a grantee acquires?
- A. Under common law, the surface land, to an indefinite extent upwards, and down to the center of the earth. However, with the great development of aviation, this right upwards is more academic than practical.
175. Q. Horne, employed as a houseman by Dearborn, steals a deed to Dearborn for the property. Horne offers to sell the property to Briggs at a greatly reduced price, telling Briggs that Dearborn, 76 years of age, is hard pressed for money and asked Horne to get a buyer in a hurry. Briggs agrees to buy the property, and Horne signs Dearborn's name to the deed. The deed is recorded. As between Briggs and Dearborn, who has good title to the property?
- A. Dearborn. A forged deed conveys no title. Briggs must seek redress against Horne.
176. Q. A restrictive covenant in a deed limits the property to dwelling houses with private garages. The premises are used by an institution for handicapped children under state supervision. Does this constitute a violation of the recorded restriction?
- A. The restriction does not limit use to one-family dwellings. Consequently, the group use, as an entity, is not a violation of the restrictive covenant: *Berger v. State*, 364 A. 2d 993 (N.J. 1976).
177. Q. Adams purchased a property from Bell. The deed gave Bell, the seller, and his family, use of the swimming pool. Later, Adams sold the property to Crane, who notified Bell that his family could no longer use the pool. Crane now seeks injunctive relief to prevent Bell from using the pool. Will he succeed?
- A. Yes; Bell had only an easement (in gross), which was *personal* to Bell's family, as long as Adams owned the property. Upon sale of the property to Crane, Bell's right to use the pool terminated.
178. Q. What is the purpose of a lis pendens proceeding?
- A. It is to give effective notice to third parties of pendency of action affecting title to, or asserting mortgage or lien on, real property.

True and False

(Answers to this section are on pages 697-699.)

1. A deed that has been signed and delivered, but not acknowledged, does not pass title. T F
2. A remainderman and a life tenant are the same. T F
3. The grantee in a deed and the mortgagor to the grantor are the same person. T F
4. The optionor and the grantee in a real estate transaction are the same person. T F
5. "Spot" zoning is necessary for uniform community development. T F
6. By-laws in a condominium take precedence over a municipal ordinance. T F
7. *Egress* means an exit from a tract of land. T F
8. A deed is recorded to give constructive notice to everyone. T F
9. An estate by the entirety is property owned by two related persons. T F
10. A permitted license to use is an easement. T F
11. A life estate is one for a specific number of years. T F
12. A life tenancy is a form of real estate ownership. T F
13. A wife does not have dower right in a property owner by her husband and another person, as joint tenants. T F
14. If the description in a deed is ambiguous, the Court will reform it. T F
15. Real estate is more inclusive than real property. T F
16. A deed is recorded to give actual notice. T F
17. A remainderman has only a life interest in real property. T F
18. An unacknowledged deed is ineffective between grantor and grantee. T F
19. Eminent domain is used more frequently in the 1970's than in the 1940's. T F
20. A deed is a bilateral contract. T F
21. One party only signs the deed (the grantor). T F
22. Livery of seisin is sufficient to pass title. T F
23. An oral deed, coupled with possession and making improvements, is sufficient to pass title. T F
24. In a tenancy in common, each co-owner possesses an equal share. T F
25. Title, under a quit claim deed, is not insurable. T F
26. A marketable title is one free from liens and encumbrances. T F
27. Burden of establishing marketable title is on the grantor. T F
28. A creditor of a wife can assert her dower interest. T F
29. Title to real estate may pass without consent of the owner. T F
30. Merchantable title is title free from liens. T F
31. Under a "government survey" the size of a check is 24 by 24 miles on each side of the square. T F
32. A life tenant cannot sell the property to another. T F
33. A deed to real estate cannot be assigned. T F
34. An abstract of title guarantees clear title. T F
35. The full consideration in any real estate transaction must always be in legal tender. T F
36. In a tenancy in common, one person may own $\frac{1}{5}$ th interest and another person may own a $\frac{4}{5}$ th interest. T F
37. When the tide water is a boundary in the deed, title to the ordinary high water mark is conveyed. T F
38. The passing of title to real estate or an interest therein from one person to another is called a conveyance. T F
39. Escrow is another name for a husband's interest in his wife's estate. T F
40. Constructive notice is knowledge charged by law to one who has no actual knowledge. T F
41. A warranty deed to real estate may be assigned. T F

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| 42. If Albert owns real estate, he can create a tenancy in common by conveying to Blake an undivided interest in such real estate. | T | F |
| 43. Recorded restrictions in a deed may be enforced by any citizen of the community. | T | F |
| 44. The cost of extending an abstract is generally paid for by the purchasers. | T | F |
| 45. Urban real estate is always described by sections. | T | F |
| 46. A deed should state the marital status of parties. | T | F |
| 47. Recording of a deed is a proper charge against the seller. | T | F |
| 48. A conveyance of the title to property for the duration of the life of the grantee is called a life estate. | T | F |
| 49. A deed cannot be recorded unless it is signed by the grantee. | T | F |
| 50. A deed is of no effect until it has been recorded. | T | F |
| 51. A quit claim deed ordinarily conveys a good and merchantable title. | T | F |
| 52. A special warranty deed is preferable to a general warranty deed. | T | F |
| 53. The grantor in a deed may impose restrictions as to the use of real property. | T | F |
| 54. Zoning restrictions, once established, cannot be changed. | T | F |
| 55. Community clubhouses, parks, and public buildings are "community property" in the real estate sense of the term. | T | F |
| 56. A quit claim deed may serve the same ends as a suit to quiet title. | T | F |
| 57. In land descriptions, the "Rectangular System" was first used in the Northwest Territory. | T | F |
| 58. The house number and the name of the street is one of the best legal descriptions there is. | T | F |
| 59. Land with the improvements thereon, is described as "real property." | T | F |
| 60. Fee simple estate is the greatest estate in real estate. | T | F |
| 61. Real property may be held in joint tenancy only by husband and wife. | T | F |
| 62. The passing of title to real estate or an interest therein from one person to another is called a conveyance. | T | F |
| 63. A deed without a date is void. | T | F |
| 64. A deed dated on a Sunday but delivered on Monday is invalid. | T | F |
| 65. An oral deed is void. | T | F |
| 66. Only related persons may be joint tenants of real estate. | T | F |
| 67. A deed to real estate does not pass title until it is acknowledged. | T | F |
| 68. An oral deed is valid if the grantee takes possession. | T | F |
| 69. A deed must be recorded in the city where the property is located. | T | F |
| 70. A remainder estate is one that has been inherited by a person to hold during his lifetime. | T | F |
| 71. The original source of ownership for most land in the United States was in the form of a grant known as a patent. | T | F |
| 72. Vertical rows of townships are called ranges. | T | F |
| 73. In a recorded plan, a lot within the plan is usually described by metes and bounds. | T | F |
| 74. There is no difference between a condominium and a co-operative apartment. | T | F |
| 75. It is lawful to deed real estate to a minor. | T | F |
| 76. A deed has no legal effect until it is delivered to the grantee. | T | F |
| 77. Delivery of a deed to grantor's agent passes title to real estate. | T | F |
| 78. Better title is conveyed by a warranty deed than by a quit claim deed. | T | F |
| 79. Good title to real estate and a good title of record are the same. | T | F |
| 80. Real property must be free and clear of all encumbrances to be declared as a "homestead." | T | F |
| 81. The recording of a deed is the obligation of the grantor. | T | F |
| 82. A deed recites a consideration of \$1.00; the actual price is \$100,000. The deed is void because of fraud on the public in misrepresenting the selling price. | T | F |
| 83. In joint ownership, if one of the parties dies, his interest goes to the surviving parties and not to the decedent's heirs. | T | F |

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| 84. Failure to attach the proper amount of State Revenue stamps renders the deed void. | T | F |
| 85. A person under 21 years of age cannot hold title to real estate. | T | F |
| 86. A valid deed must contain a granting clause. | T | F |
| 87. A quit claim makes no warranty of title. | T | F |
| 88. The legal description in a deed can be enlarged by oral testimony in court. | T | F |
| 89. Escrow is another name for a wife's interest in her husband's property. | T | F |
| 90. A deed takes effect only upon delivery. | T | F |
| 91. A forged deed is void and does not convey good title under any circumstances. | T | F |
| 92. The lot and block system of land description is a description by metes and bounds. | T | F |
| 93. In describing lands by metes and bounds, a course described as being "North 45 degrees east" runs in a northeasterly direction. | T | F |
| 94. Title to real estate is passed by delivery of the abstract of title. | T | F |
| 95. The term "tenants in common" refers to several persons who lease and occupy the same property. | T | F |
| 96. Certain parts of condominium ownership are held as tenants in common. | T | F |
| 97. Any person sui juris may be given a power of attorney. | T | F |
| 98. A person unable to write could not own real estate since he would be unable to sign a deed. | T | F |
| 99. A typewritten signature to a deed is void. | T | F |
| 100. After a deed has been recorded, the grantee will lose the property if he loses the deed to it. | T | F |
| 101. A "set-back" ordinance regulates the minimum distance allowable between street line and front of new buildings. | T | F |
| 102. In the sale of real property, the seller is known as the grantee. | T | F |
| 103. In describing lands by metes and bounds, a course may be described by trees, rocks and woods. | T | F |
| 104. In order to create a joint tenancy, there must be present the four unities of time, title, interest and possession. | T | F |
| 105. Clouds on title to real estate are removed by obtaining title insurance. | T | F |
| 106. The most common form of land measurement in eastern rural areas is by metes and bounds. | T | F |
| 107. A gift deed must always have a monetary consideration. | T | F |
| 108. A quit claim deed warrants and guarantees nothing. | T | F |
| 109. Title to real property without improvements may be conveyed by the issuance of a Bill of Sale. | T | F |
| 110. A township is one mile square. | T | F |
| 111. Property may be held in joint tenancy only by husband and wife. | T | F |
| 112. A tenancy in common carries with it the right of survivorship. | T | F |
| 113. A deed is of no effect until it has been signed, sealed, and delivered. | T | F |
| 114. A single person and a married person may hold title to real estate as joint tenants. | T | F |
| 115. A deed is recorded to give notice to the public that the party named in the deed has a vested right or interest in the property described. | T | F |
| 116. One instrument often used to remove a cloud on a title to real estate is an escheat. | T | F |
| 117. Real estate may be defined as any property not considered personal. | T | F |
| 118. The buyer should pay for an attorney's examination of the title. | T | F |
| 119. In the escrow of a deed, it is desirable for the broker to act as the escrow holder. | T | F |
| 120. Assessments on real estate for tax purposes are made every even year. | T | F |
| 121. A public utility company always has an easement in any property by act of the legislature. | T | F |
| 122. An action to quiet title is used to remove a cloud on the title. | T | F |
| 123. A married woman who acquired title before marriage should sign a deed only in | | |

her maiden name.	T	F
124. It is proper to give a quit claim deed even though your interest in the property is negligible or questionable.	T	F
125. An abstract of title guarantees a clear title.	T	F
126. When one owns real estate, his warranty deed gives no better protection than his quit claim deed would give.	T	F
127. A deed may sometimes be recorded without being acknowledged.	T	F
128. One who receives the deed is called the grantee.	T	F
129. An escrow agent is the agent for <i>both</i> buyer and seller.	T	F
130. A deed by a minor is voidable at his option.	T	F
131. A deed takes effect only from the date it is recorded.	T	F
132. Right to an easement can be lost by non-use for six years.	T	F
133. Real estate taxes are levied only upon the owner's equity between the assessed value and the mortgage encumbrance.	T	F
134. Chain of title is the succession of conveyances from some accepted starting point whereby the present holder of real property derives his title.	T	F
135. A grantee receives no better title than his grantor had.	T	F
136. The owner of real property becomes the grantor when he sells the property.	T	F
137. An easement is an encumbrance on real estate.	T	F
138. An estate in severalty is an estate owned by one person alone.	T	F
139. It is necessary to itemize in the deed all improvements affixed to the real estate being conveyed if they are to be sold with the real property.	T	F
140. A Bill of Sale is the instrument by which the title to real estate passes.	T	F
141. Upon the death of one of two tenants in common to real estate, the interest and title in the land of the deceased owner descends to his heirs and not to the surviving party.	T	F
142. The terms "tide lands" and "shore lands" apply to the same land.	T	F
143. Tenancy in common refers to ownership rather than occupancy.	T	F
144. When a grantor faultily executes a deed, he can be compelled to sign a corrected deed.	T	F
145. A trustee's deed is generally a warranty deed rather than a special warranty deed.	T	F
146. A chain of title refers to a unit of land measurement.	T	F
147. A good title and a marketable title generally mean the same thing.	T	F
148. Real estate and real property generally mean the same thing.	T	F
149. A community apartment house is considered a subdivision.	T	F
150. Where one is negligent in asserting his legal rights, he is guilty of estoppel.	T	F
151. Metes and bounds is a system of land description by measure and direction.	T	F
152. A beneficiary under a trust must always join in the deed by the trustee.	T	F
153. A deed by the officers of a corporation must be made in pursuance of a resolution of the board of directors authorizing the particular sale.	T	F
154. A deed to farm property will include the sale of all machinery and farm implements.	T	F
155. The recording of a deed guarantees its validity.	T	F
156. If a deed has been recorded and the consideration price has not been paid in full, the deed is void.	T	F
157. Title insurance offers protection against loss by fire.	T	F
158. An unpaid tax lien is an encumbrance on title.	T	F
159. A sheriff's deed is a general warranty deed.	T	F
160. No personal property can ever become real property.	T	F
161. A good and a valuable consideration are legally the same.	T	F
162. A declaration of homestead is of no effect until recorded.	T	F
163. Two brokers can own community property.	T	F
164. Real property in name of wife is presumed to be her separate property.	T	F
165. On death of father, children inherit one half of community property.	T	F

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| 166. A quit claim deed generally conveys fee simple title. | T | F |
| 167. An abstract of title is a summary or digest of all instruments affecting the title. | T | F |
| 168. A deed to husband and wife creates an estate by the entireties. | T | F |
| 169. Property may be owned by more than two joint tenants. | T | F |
| 170. Recording a deed is the obligation of the grantor. | T | F |
| 171. A grantor of a deed may impose restrictions as to the use of real property. | T | F |
| 172. Building restrictions which run perpetually are invalid. | T | F |
| 173. Zoning restrictions and building restrictions are the same. | T | F |
| 174. A minor cannot void a real estate transaction if he misrepresented his age. | T | F |
| 175. To be valid, a deed must always be signed by both the grantor and the grantee. | T | F |
| 176. A habendum clause is essential in a deed in order to pass a valid title. | T | F |
| 177. The date in the beginning of the deed should not be subsequent to the date in the acknowledgment. | T | F |
| 178. The clause in the deed which indicates who is to give the property and who is to receive the property is called the covenant of seizin. | T | F |
| 179. Attestation means witnessing the deed. | T | F |
| 180. A deed may be acknowledged by a justice of the peace or a notary public. | T | F |
| 181. In the conveyance of real estate, all permanent buildings must be described in the warranty deed. | T | F |
| 182. A quit claim deed does not convey fee simple title. | T | F |
| 183. A deed need not be in writing if grantor and grantee appear before the County Recorder of Deeds and swear that the transfer is voluntary and for consideration. | T | F |
| 184. The actual selling price of real property must be shown in the deed. | T | F |
| 185. A property owner may use his property as a surety bond for another person's obligation. | T | F |
| 186. Joint tenants with right of survivorship means literally that the building is being operated as a "joint" with police protection. | T | F |
| 187. An unrecorded deed is good and valid as between the parties to the instrument. | T | F |
| 188. A fee tail estate affords greater protection to a grantee than a fee simple estate. | T | F |
| 189. A "deed" takes effect during the grantor's lifetime and a "will" at the testator's death. | T | F |
| 190. The actual selling price of real property is never shown in the deed. | T | F |
| 191. In the conveyance of real estate, all auxiliary buildings are described in the warranty deed. | T | F |
| 192. Fractional sections of farm land are always caused by errors in survey. | T | F |
| 193. A judgment lien against a grantor renders the title unmarketable. | T | F |
| 194. Title insurance guarantees the owner against all defects in title. | T | F |
| 195. An error by the Recorder's Office in recording the deed will render the deed invalid. | T | F |
| 196. A Judge of a court of record may take acknowledgments. | T | F |
| 197. A general warranty deed gives the same protection as title insurance. | T | F |
| 198. The right to continue a non-conforming use may be lost through destruction of the building. | T | F |
| 199. A non-conforming use may be terminated by a new zoning law. | T | F |
| 200. The law of caveat emptor has been strengthened through court decisions. | T | F |
| 201. A person who has real estate devised to him is said to acquire title by adverse possession. | T | F |
| 202. "Metes and bounds" has reference to the topography of the land. | T | F |
| 203. Zoning ordinances are enacted primarily to define "no-parking" zones. | T | F |
| 204. A deed given in return for domestic services has legal consideration. | T | F |
| 205. An interest in ownership of personal property is usually termed an estate in fee simple. | T | F |
| 206. A City Zoning Ordinance has reference to the local postal zones. | T | F |
| 207. The recording of a deed to real property is the obligation of the grantee. | T | F |
| 208. Torrens Land Titles is a state operated land title system based upon registration | | |

of title.	T	F
209. The full consideration in any real estate transaction must always be in legal tender.	T	F
210. The execution of a deed means that it was properly signed and acknowledged by the grantee.	T	F
211. A grantor impliedly warrants that he has fee simple title to the property.	T	F
212. The sole purpose of an acknowledgment to a deed is to promote the security of the title.	T	F
213. A purchaser at a foreclosure sale usually receives a bargain and sale deed.	T	F
214. The "Chain of Title" is found in the "Abstract of Title."	T	F
215. Real property includes everything that is not personalty.	T	F
216. A fee simple title is most often used in transferring title to a dwelling.	T	F
217. Tenements, in conveying title, refers to sub-standard structures.	T	F
218. A special warranty deed is used in conveying title to a widow or widower.	T	F
219. The grantee in a deed is the same person who executes a mortgage on the property.	T	F
220. One who dies holding tenancy in common may will his interest to his next of kin.	T	F
221. A septic tank system is a private sewage disposal system for individual homes.	T	F
222. A Sheriff's Deed and a Tax Deed are usually considered to have the same effect.	T	F
223. Title to property may pass to another by adverse possession.	T	F
224. Title by adverse possession is just as valid as title by deed.	T	F
225. A suit for specific performance is an action to quiet title.	T	F
226. In directions in a deed, east is always to the right of north.	T	F
227. Real estate may include more than just land.	T	F
228. Real Estate Commissioners are authorized by the license law to take acknowledgments.	T	F
229. A section of land contains 360 acres.	T	F
230. A \$1.00 consideration is sufficient for an option.	T	F
231. One who has taken an option on certain real estate must complete the purchase of the property.	T	F
232. The consideration in an option is always applied to the purchase price, if the option is exercised.	T	F
233. Zoning regulations limit the use of real estate.	T	F
234. Failure to record documents has no effect on their validity.	T	F
235. It is usually false economy to fail to secure a title search when purchasing property.	T	F
236. If you include your piano and television set in the sale of your home, they become a part of the real estate.	T	F
237. A property may be transferred by deed when the consideration is only love and affection.	T	F
238. The term "fee simple" means that it is the usual commission for the sale of real estate.	T	F
239. An easement means making the payment easier on a mortgage.	T	F
240. A warranty deed is used to convey title to chattels.	T	F
241. A power of attorney can be given only to duly qualified attorneys at law.	T	F
242. A deed to partnership property sold by the partners need not have the joinder of the wives of the partners.	T	F
243. Two or more persons who take title to property by a single deed hold it as partners.	T	F
244. It is not necessary to require a title search when conveying property worth less than \$1,000.00.	T	F
245. It is legal to describe property by lot, block, and tract number if sold from a recorded plan.	T	F
246. Laws passed by a governing body whereby certain described sections are set aside for certain purposes are known as zoning laws.	T	F

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| 247. The deed which is executed in a foreclosure action is an Executor's Deed. | T | F |
| 248. The terms "real estate," "realty," and "real property" mean practically the same thing. | T | F |
| 249. An agreement under which an instrument or money is deposited with a third person to be delivered upon the performance of a condition is called a power of attorney. | T | F |
| 250. The ownership of real estate by two or more persons, each of whom has an undivided interest, without the "right of survivorship," is called a Tenancy in Common. | T | F |
| 251. It is not necessary to require a title search when buying a vacant lot. | T | F |
| 252. "Beneficiary," "Trustor," and "Trustee" are the legal designations of the parties to a trust deed. | T | F |
| 253. Upon the death of the father and mother, the children inherit one-half of the community property. | T | F |
| 254. A "conditional sales contract" on real property can be recorded only if it has been acknowledged by the buyer. | T | F |
| 255. A final decree of divorce has the effect of an abandonment of a declaration of homestead. | T | F |
| 256. Dating a deed is necessary to make it valid. | T | F |
| 257. If a husband alone signs a listing on community property, the broker cannot collect a commission if the wife refuses to sell. | T | F |
| 258. In a standard township, section 31 is located in the southwest corner. | T | F |
| 259. Fee simple title is all the bundle of rights in real estate. | T | F |
| 260. A standard township contains 20,340 acres of land. | T | F |
| 261. A "Power of Attorney" is a title examiner who closes real estate transactions. | T | F |
| 262. A ground rent is real estate. | T | F |
| 263. Title by adverse possession is just as valid as title by a written instrument. | T | F |
| 264. An easement is real estate. | T | F |
| 265. A deed must be recorded in the county where the property is located. | T | F |
| 266. A deed, once recorded, if lost, has no effect on the title. | T | F |
| 267. The major objective of the Homestead Law is to protect against execution to satisfy debts. | T | F |
| 268. A grantor who has improperly executed a deed, which has been recorded, cannot be required to execute a new deed. | T | F |
| 269. Restrictions in a deed are desirable in order to maintain value of the property. | T | F |
| 270. A restriction and an easement mean the same thing. | T | F |
| 271. A grantee who delays in recording a deed is subject to a penalty. | T | F |
| 272. Courts do not inquire into the sufficiency of the consideration price. | T | F |
| 273. The warranty clause in a deed and the testimonium clause mean the same thing. | T | F |
| 274. A recital of title is essential to the validity of a deed. | T | F |
| 275. It is the obligation of the grantee to see that the deed is properly indexed. | T | F |
| 276. A deed executed in a foreign country should be acknowledged before a minister or consul of this country. | T | F |
| 277. Where a judgment note has been given in payment of the consideration and the note is not paid at maturity, the deed is void. | T | F |
| 278. Either parent, by operation of law, is duly authorized to execute a deed for a minor child. | T | F |
| 279. The sale of land includes all appurtenances thereto. | T | F |
| 280. Building restrictions, as specified in the deed, are not encumbrances against the property. | T | F |
| 281. The only essential unity in a tenancy in common is the equal right of possession. | T | F |
| 282. A list of furniture included in a sale of property should be stated in the deed. | T | F |
| 283. A deed by a partnership should be executed in the partnership name only. | T | F |
| 284. A corporation deed should always recite the resolution of the board of directors, authorizing the conveyance. | T | F |

285. Where property is sold within one year, it is not necessary to have the title examined.	T	F
286. A road through a private property used by another with permission of the owner is an appurtenance.	T	F
287. It is possible to exchange properties even though both are subject to existing mortgages.	T	F
288. Interest on delinquent real estate taxes always accrues at the rate of 1%.	T	F
289. In a standard township, section 30 is in the southwest corner.	T	F
290. A sheriff's deed and a tax deed are the same as far as warranties.	T	F
291. A deed to "John Saxman or Andrew Erbel" is valid.	T	F
292. A merchantable title is one free from clouds or defects.	T	F
293. A covenant of seizin is the grantor's guarantee that he is the owner of the property and has the power to convey title thereto.	T	F
294. There are no covenants to be found in a quit claim deed.	T	F
295. Signing a deed does not transfer title.	T	F
296. Failure to record a deed or a mortgage has no effect on its validity.	T	F
297. <i>Alluvium</i> and <i>avulsion</i> are synonymous terms.	T	F
298. A fee simple estate and a fee simple absolute estate are the same.	T	F
299. An executed deed transfers title to real estate.	T	F
300. An encumbrance is anything which affects the title to real estate.	T	F
301. Every fixture is a chattel.	T	F
302. In a rectangular survey a check is sixteen townships.	T	F
303. A title insurance policy excepts conditions shown by actual survey.	T	F
304. A quit claim deed of a husband need not be signed by his wife.	T	F
305. Condemnation of private property for public use is called acquisition.	T	F
306. A co-operative apartment ownership generally is more advantageous than in a condominium.	T	F
307. Tenancy in common refers to ownership.	T	F
308. A restrictive easement is one which runs with the land.	T	F
309. "Spot" zoning is permissible in hardship cases.	T	F
310. The total land area of a homestead is limited by statute.	T	F
311. A person having a freehold interest in land to be held during the life of another is a leasehold estate.	T	F
312. A tract (of land) and a check can be used interchangeably in measurement terms.	T	F
313. The habendum clause and the testimonium clause in a deed are similar and can be used interchangeably.	T	F
314. An irrigation ditch on a ranch is personal property.	T	F
315. A and B may own a $\frac{1}{4}$ and $\frac{7}{8}$ interest, respectively, as tenants in common.	T	F
316. A single man and a husband and wife may own property as joint tenants.	T	F
317. A husband and wife may own real estate only as community property.	T	F
318. Personal property is never held by tenants in common.	T	F
319. Title to real estate may pass without consent of the owner.	T	F
320. When the tide water is a boundary in the deed, title to the ordinary high water mark is conveyed.	T	F
321. A freehold interest is ownership of a fee simple or life estate.	T	F
322. Tenancy in common may be created by destruction of a joint tenancy.	T	F
323. As between the parties, a deed is invalid without subscribing witnesses or acknowledgment.	T	F
324. The recording of a deed guarantees its validity.	T	F
325. Alluvial land is generally unproductive land on which the return over cost of production is practically nil.	T	F
326. Horizontal rows of townships are called tiers.	T	F
327. Chain is a unit of measurement—16 $\frac{1}{2}$ feet.	T	F
328. The United States Internal Revenue Tax was repealed on January 1, 1966.	T	F
329. Condominium ownership is a stabilizing factor in maintaining urban population.	T	F

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| 330. Condominium ownership has greater safeguards to the individual owner than that of a co-op apartment. | T | F |
| 331. Condominium ownership is less than 25 years old in this country. | T | F |
| 332. An owner of a condominium must obtain approval of his fellow owners as to type of flooring and decor, in order to maintain uniformity. | T | F |
| 333. Owner of a condominium unit is unable to obtain F.H.A. financing. | T | F |
| 334. Condominium ownership is the result of a state enabling statute. | T | F |
| 335. An estate is the interest one has in property. | T | F |
| 336. A system of land registration by which the state guarantees the title is known as the Torrens system. | T | F |
| 337. Rights which are incidental to the land and "go with the land" are encroachments. | T | F |
| 338. A reconveyance deed is used in connection with a trust deed. | T | F |
| 339. There are 20 acres included in the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of a section of land. | T | F |
| 340. Title to a vacant tract of land may be conveyed by a bill of sale. | T | F |
| 341. A devise is the reversion of real estate to the State when the testator dies intestate. | T | F |
| 342. An appropriation of land by an owner for some public use and acceptance for such use is called a dedication. | T | F |
| 343. Reformation is an action to correct an error in a deed. | T | F |
| 344. A devise of real estate may be changed by the maker of the will at any time before death. | T | F |
| 345. An oral gift of real estate to take effect after death, made in the presence of two disinterested witnesses, is valid. | T | F |
| 346. A fence existing for more than six years will be regarded as the true boundary line between two farms. | T | F |
| 347. Ownership of a condominium unit is the same as ownership of a dwelling. | T | F |
| 348. Constructive knowledge is knowledge charged by law to one who has no actual knowledge. | T | F |
| 349. Delivery in escrow is where a deed to real estate is delivered to a third person pending the performance of some condition. | T | F |
| 350. The cost of any required state documentary transfer stamps is charged to the seller. | T | F |
| 351. Harry Jones, a single man, and Mary Steele, a married woman, may own property as joint tenants. | T | F |
| 352. The cost of any state documentary transfer tax may be deducted from the Federal Income Tax. | T | F |
| 353. The statute of frauds is the same as the Truth in Lending law. | T | F |
| 354. A fee simple absolute estate is the same as a fee simple estate. | T | F |
| 355. State documentary (excise) stamps are necessary on both deeds in an exchange of real estate. | T | F |
| 356. A deed can include an easement which was not included in the agreement of sale. | T | F |
| 357. A deed is of no effect unless it has been signed, acknowledged, delivered and recorded. | T | F |
| 358. A deed can be signed for the grantor by another person at the grantor's direction and in his presence. | T | F |
| 359. The grantor may impose restrictions as to the sale of real property to persons other than that of the Caucasian race. | T | F |
| 360. The 1866 Act of Congress forbidding discrimination in real estate sales is still in force. | T | F |
| 361. In recording a deed, it must be recorded in the city or town where the property is situated. | T | F |
| 362. If Adams owns real estate, he can create a tenancy in common by conveying an | | |

undivided $\frac{1}{10}$ interest.	T	F
363. If you include the ancient grandfather's clock in the sale of your house, it becomes a part of the real estate.	T	F
364. A grantee may require the grantor, who claims title to real estate by adverse possession, to obtain a court decree first.	T	F
365. A deed in escrow passes title to the grantee immediately upon delivery to the escrow holder.	T	F
366. If a deed is delivered in escrow and the grantor dies on the following day, the deed is void.	T	F
367. An unrecorded deed is good as against a subsequent recorded mortgage against the grantor.	T	F
368. An action to quiet title is brought to remove a cloud on the title.	T	F
369. Real property may be owned jointly by persons other than husband and wife.	T	F
370. In order to hold a power of attorney, the person must be an owner of real estate.	T	F
371. In order to convey property, the grantor must produce the deed to him.	T	F
372. A wife cannot become a tenant in common with her husband.	T	F
373. A tax rate of one mill is the same as a rate of one-tenth of one per cent of the assessed value of the property.	T	F
374. Two persons who own undivided interests in a piece of real property without the right of survivorship own the property as joint tenants.	T	F
375. A person who makes, signs, or issues any taxable instrument shall affix and cancel the documentary stamps.	T	F
376. Two or more persons may together own property in severalty.	T	F
377. The rectangular survey system is the United States governmental survey system.	T	F
378. Metes (in a description) are measurements of distance.	T	F
379. A fee simple title is the most comprehensive ownership in land.	T	F
380. A building permit, issued by a city, which violates a zoning law is a nullity.	T	F
381. A zoning ordinance excluding singles from a one-family residence zone is unconstitutional.	T	F
382. Verbal testimony is generally admissible to explain the contents of a deed.	T	F
383. A quit claim deed may be assumed by endorsement by the grantor.	T	F
384. Tenancy at will is equivalent to tenancy in common.	T	F
385. A cul de sac in a subdivision creates less traffic and noise.	T	F
386. A trust account serves the same purpose as an escrow account.	T	F
387. The burden of proof in an eminent domain proceedings is upon condemnor.	T	F
388. Eminent domain is an inherent right of state sovereignty.	T	F
389. In an easement of a right of way, the servient tenement receives the benefit.	T	F
390. An easement in gross is appurtenant to the land.	T	F
391. An implied easement is enforceable.	T	F
392. In a quit claim deed to extinguish a recorder agreement of sale, the vendee is the grantor.	T	F
393. If the date in the acknowledgment antedates the date in the deed, the deed is void.	T	F
394. The date in the deed always determines when title passed.	T	F
395. If a grantor signs a deed without reading it, the deed is invalid.	T	F
396. A deed, naming the Lutheran Church as grantee, is void.	T	F
397. A deed to two individuals, John Steele and Henry Adams, "as partners," would not create a tenancy in partnership.	T	F
398. An appurtenant easement offers more protection to a grantee than an easement in gross.	T	F
399. An estate by the entirety is property owned by two partners.	T	F
400. Allodial land is the opposite of feudal ownership.	T	F
401. Dower rights are extinguished if a wife pre-deceases her husband.	T	F
402. Constructive notice of ownership is given by the grantee's possession of the premises.	T	F

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| 403. A patent deed to real estate is one obtained from the United States Patent Office. | T | F |
| 404. A single deed that contains a legal description of more than one property is invalid. | T | F |
| 405. A life tenant may lease property. | T | F |
| 406. A deed to John Steele and Mary Steele, his wife, is valid, even though the parties are not married. | T | F |
| 407. Deed transfer stamps on a recorded deed do not always reflect the true price paid by the purchaser. | T | F |
| 408. A landmark stated in a deed description would take precedence in reconciling a linear deed description. | T | F |
| 409. Eminent domain proceedings are the same as a condemnation proceeding. | T | F |
| 410. In a suit to quiet title, should the plaintiff win, a deed would be signed by the court. | T | F |
| 411. In zoning, a variance and a non-conforming use mean the same thing. | T | F |
| 412. Where three persons have acquired title to real estate and the deed does not state whether they are joint tenants or tenants in common, the grantees would own the property equally, as tenants in common. | T | F |
| 413. A tenant in common cannot convey title to his share, unless the other co-owners join in the deed. | T | F |
| 414. Between two co-owners, it is legal for one party to own one-tenth and the other co-owner nine-tenths of the property. | T | F |
| 415. The law applicable to joint ownership of property and ownership, as tenants by the entirety, is the same. | T | F |
| 416. A deed is recorded mainly to facilitate a title examination. | T | F |
| 417. An estate by the entirety is real property owned by two members of the same family. | T | F |
| 418. A property is owned by James Ayres and Jane Ayres, his wife. Notice of a delinquent tax is made out to James Ayres et ux. The sale is invalid. | T | F |
| 419. Real property and real estate are synonymous. | T | F |
| 420. The manager of a garage complex may file a mechanic's lien. | T | F |
| 421. A municipality may provide in its charter for a popular referendum on a zoning application. | T | F |
| 422. A deed to Henry Martin and Jane Martin, his wife, who are not actually married, always creates a tenancy in common. | T | F |

Multiple Choice

(Answers to this section are on pages 699-701.)

1. There is an encroachment when the owner's property
 - (a) extends to the side area of adjoining property.
 - (b) extends back a certain distance from the street line.
 - (c) extends beyond the owner's survey lines.
 - (d) stairs to the basement contain more than 16 steps.
2. Local governments depend for revenue mostly upon
 - (a) taxes on real estate.
 - (b) sales tax on purchases.
 - (c) allotments from the state.
 - (d) sale of tax exempt municipal bonds.
3. Right to dower may be extinguished by a
 - (a) subordination agreement.
 - (b) deed in severance.
 - (c) ante-nuptial agreement.
 - (d) lease in perpetuity.

4. Zoning controls are enacted by
 - (a) zoning boards or commissions.
 - (b) Department of Planning.
 - (c) Recorded Declaration of Rights by the subdivider.
 - (d) Municipal Council or Commissioners.
5. Zoning acts represent an exercise of the police power of the state and are enacted in pursuance of
 - (a) the common law.
 - (b) a state statute.
 - (c) a U.S. Supreme Court decision.
 - (d) a state Supreme Court edict.
6. A non-conforming use in zoning means which one of the following?
 - (a) Not allowed to continue if zoning ordinance is amended to prohibit its use.
 - (b) A continuing use for a limited number of years.
 - (c) Permitted to continue until use is abandoned, or building is destroyed.
 - (d) May be continued in perpetuity.
7. John Steele sold his residence to Adam Horne. On January 19, 1978, the executed deed from Steele was turned over to Safety Title Co., as escrow holder, and Horne, at the same time, gave the Title Co. a check for the consideration price. The escrow condition is that a survey is to be made to ascertain whether the description in the deed is accurate. Before the survey is completed, on January 26, 1978, Steele instructs the Title Co. to return his deed to him, and to refund Horne's money to Horne. Under these circumstances:
 - I. the Title Co. should refuse to comply with Steele's directions.
 - II. the Title Co. should bill Horne for the survey.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
8. Adams subdivided a tract of land into 40 lots. Each lot contained a reservation that no dwelling could be built costing less than \$40,000. All lots have been sold and Adams is now subdividing a newly purchased tract of 40 acres, which will be restricted to \$30,000 dwellings. Burns, purchaser of a lot in the earlier subdivision, has made application for a building permit to erect a dwelling, costing \$30,000. Under these circumstances:
 - I. Adams can enjoin Burns in constructing the \$30,000 home.
 - II. Adams can collect damages for violation of the restriction.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
9. Three friends purchase a vacant tract of land for \$10,000. Allen contributed \$2,000, Blake contributed \$3,000, and Clair contributed \$5,000. The deed is made to George Allen, Frank Blake and William Clair. The three grantees are
 - (a) partners.
 - (b) owners in common.
 - (c) joint tenants.
 - (d) joint entrepreneurs.
10. Easement in gross is a
 - (a) privilege in the servient tenement.
 - (b) personal privilege in land of another.
 - (c) one created by statute.
 - (d) percentage of receipts paid as rent.
11. A restrictive covenant in a deed must not be contrary to
 - (a) The real estate license.

- (b) public policy.
 - (c) statute of frauds.
 - (d) opinion of the state attorney general.
12. The United States governmental survey system is
- (a) metes and bounds.
 - (b) recorded plat.
 - (c) rectangular survey system.
 - (d) none of these.
13. Bates conveyed a fee simple title to the Avon Baptist Church, by deed, to be used for church purposes, in 1950. In 1978, the church abandons the property, due to environmental changes. Title to the property will:
- (a) remain in the church.
 - (b) escheat to the state.
 - (c) revert to Bates.
 - (d) be owned by the church and Bates, as joint tenants.
14. Which designation of the following is not related to zoning regulations?
- (a) Residential.
 - (b) Commercial.
 - (c) Farm.
 - (d) Industrial.
15. Guy Warren conveyed a property to James C. Warren, single, and John B. Davis and Marie Warren Davis, husband and wife. Under this conveyance
- I. each of the grantees owned one-third.
 - II. James C. Warren owned one-half, and John B. and Marie W. Davis, together, owned one-half.
- (a) I only.
 - (b) II only.
 - (c) all grantees were joint owners.
 - (d) none of these.
16. Probate means an action to:
- (a) cure a defect by a quit claim deed.
 - (b) prove title by adverse possession.
 - (c) process a will, to establish its validity.
 - (d) obtain access to a safe deposit box.
17. The construction of a mobile home in a commercial use zone
- (a) violates residential restrictions.
 - (b) does not violate residential restrictions.
 - (c) violates a city public health code.
 - (d) is a violation, per se.
18. Which type of deed limits the covenants of the grantor when he conveys real estate?
- (a) Quit claim.
 - (b) Special warranty.
 - (c) General warranty.
 - (d) None of these.
19. The voluntary transfer of title to real estate is
- (a) divestiture.
 - (b) adverse possession.
 - (c) alienation.
 - (d) surrender.
20. Trees on land become personal property by
- (a) conversion into lumber.
 - (b) sale of the land.
 - (c) appropriation by eminent domain.
 - (d) foreclosure on a mortgage.
21. Which one of the following is not necessary for a valid transfer of title to real estate?

- (a) Signing.
 - (b) Acknowledgment.
 - (c) Delivery.
 - (d) Recording.
22. A man devised his residence to his widow and upon her death, it was to go to two of his three children. The widow received a
- (a) life estate.
 - (b) partial estate.
 - (c) remainder estate.
 - (d) leasehold.
23. Tenancy in common refers to
- (a) occupancy by two or more persons.
 - (b) survivorship.
 - (c) ownership.
 - (d) a lease that has restrictive covenants to tenants.
24. Real estate occupied as a home, by an owner, who enjoys special rights and privileges is
- (a) a freehold.
 - (b) a homestead.
 - (c) a joint tenancy.
 - (d) unjust enrichment.
25. Timber on land becomes personal property by
- (a) sale of the land.
 - (b) written declaration of owner.
 - (c) severance.
 - (d) eminent domain.
26. The water table is the
- (a) measure of water flow.
 - (b) rate for cost of water.
 - (c) depth where water is found.
 - (d) average rainfall per month.
27. An estate at will is a
- (a) form of co-ownership.
 - (b) tenancy of uncertain duration.
 - (c) inheritance of property by will.
 - (d) life estate.
28. An area of land set off by municipal authorities for a specific use is called
- (a) a cul de sac.
 - (b) a subdivision.
 - (c) a zone.
 - (d) territory.
29. Alice Nichols, a married woman, and Henry Steele, single, may not own real estate as
- (a) tenants in common.
 - (b) joint tenants.
 - (c) tenants by the entireties.
 - (d) remainder devisees.
30. A conveyance is made to John Smith, his heirs and assigns.
- (a) Smith has a life estate.
 - (b) Smith has a fee simple estate.
 - (c) Smith's heirs have a remainder estate.
 - (d) Smith's heirs have a reversionary estate.
31. Andrew Erbel, a single man, and William Rushton, a single man, wish to take the title to real property so that each will own a one-half interest, and if either of them dies, the other will own the entire property. The Grantee clause should read:
- (a) Andrew Erbel, a single man, and William Rushton, a single man, each an undivided one-half interest as tenants in common.

- (b) Andrew Erbel and William Rushton, single men, as joint tenants.
 - (c) Andrew Erbel, a single man, and William Rushton, a single man, jointly and severally.
 - (d) Andrew Erbel and William Rushton, single men, as co-owners.
 - (e) None of the above is correct.
32. In order to record a deed, it must be in writing and
- (a) signed by grantee.
 - (b) recite the actual purchase price.
 - (c) acknowledged.
 - (d) be free of all liens.
33. The most comprehensive ownership of land at law is known as
- (a) estate for years.
 - (b) life estate.
 - (c) fee simple.
 - (d) defeasible title.
34. James Steele and Mary Steele, his daughter, buy a tract of ground for all cash and the property is deeded to them "with right of survivorship." James and Mary are:
- (a) joint tenants.
 - (b) tenants by the entireties.
 - (c) tenants in common.
 - (d) none of the above.
35. In a tenancy in common, each person owns
- (a) the whole of an undivided part.
 - (b) an undivided part of the whole.
 - (c) an equal share.
 - (d) a pro rata share in severalty.
36. Clauses in a deed are dictated by
- (a) the recorded deed.
 - (b) the listing agreement.
 - (c) the oral agreement of the contracting parties.
 - (d) the agreement of sale.
37. An estate of inheritance, or for life is known as
- (a) freehold.
 - (b) less than a freehold.
 - (c) greater than a freehold.
 - (d) none of these.
38. A wall erected on the line between two adjoining properties belonging to different persons which serves as an outside wall of both buildings is a
- (a) party wall.
 - (b) community wall.
 - (c) line wall.
 - (d) share wall.
39. The largest estate or ownership in real property is
- (a) a fee tail estate.
 - (b) a fee simple estate.
 - (c) a homestead.
 - (d) a littoral right.
40. A land description reading: The N $\frac{1}{2}$ of the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ contains
- (a) 15 acres.
 - (b) 10 acres.
 - (c) 7 acres.
 - (d) 20 acres.
41. From the standpoint of the grantor in a deed conveying real estate which of the following types of deed creates the least liability?
- (a) Special warranty.

- (b) General warranty.
 - (c) Bargain and sale.
 - (d) Quit claim.
42. Land acquired by husband or wife by their labor after marriage in Arizona, California, Florida or Texas, is
- (a) separate property.
 - (b) real property.
 - (c) community property.
43. Community property is owned by
- (a) the church.
 - (b) father and son.
 - (c) the city or community.
 - (d) a housing authority.
 - (e) husband and wife.
44. The instrument which conditionally conveys title to real estate is a
- (a) conditional bailment lease.
 - (b) chattel mortgage.
 - (c) mortgage.
 - (d) land purchase contract.
45. A means of acquiring title where the occupant has been in actual, open, notorious, exclusive and continuous occupation of property for the statutory period by
- (a) reversion.
 - (b) adverse possession.
 - (c) fee simple.
 - (d) fee absolute.
46. The recording of a warranty deed
- (a) passes the title.
 - (b) insures the title.
 - (c) guarantees the title.
 - (d) gives constructive notice of ownership.
47. The four unities required for joint tenancy are
- (a) possession.
 - (b) time.
 - (c) husband and wife.
 - (d) title.
 - (e) location.
 - (f) interest.
48. The clause in a deed which sets forth or limits the extent of the interests in the title being conveyed is
- (a) the demising clause.
 - (b) the testimonium clause.
 - (c) the habendum clause.
 - (d) the indenture clause.
49. A person who has real property devised to him by a will is said to acquire title by
- (a) reversion.
 - (b) release.
 - (c) inheritance.
 - (d) adverse possession.
50. A deed to be valid need not necessarily be
- (a) signed.
 - (b) written.
 - (c) sealed.
 - (d) delivered.
51. By will, Calhoun devises his property to his daughter, Mary Calhoun, for life, and at her death to "her children." At Calhoun's death, Mary, 30 years of age and unmarried,

- deeds a fee simple estate to Davis. The title is
- (a) valid.
 - (b) invalid.
 - (c) Davis obtains a fee tail estate.
 - (d) Davis is a tenant.
52. The type of deed which creates the least protection to the grantee is a
- (a) quit claim.
 - (b) general warranty.
 - (c) special warranty.
 - (d) deed to tenants in common.
53. A distance in a recorded deed description is inadvertently omitted. The grantee has a buyer for the property, who raises questions about the incomplete description. The original grantee
- (a) must file court suit for reformation of the deed against the Recorder (Register) of Deeds.
 - (b) merely record a copy of the deed, with the proper description inserted.
 - (c) compel the buyer to accept the deed since it conforms to the original deed description.
 - (d) can compel the original grantor to execute new deed with proper description.
54. In which of the following, would an innocent purchaser for value be held not to obtain title?
- I. Under a forged signature to a deed.
 - II. Under a quit claim deed.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
55. A person to whom real estate is devised by will acquires title by
- I. inheritance.
 - II. law of remainderman.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
56. The 1968 federal housing act relates to open housing and related mortgages. It deals with:
- I. multiple listing associations.
 - II. racial discrimination.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
57. A clause in a deed limiting the use and enjoyment of property is:
- I. a hereditament.
 - II. a restriction.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
58. The largest ownership in real estate is:
- I. fee simple.
 - II. life estate.
- (a) I only.
 - (b) II only.
 - (c) both I and II.

- (d) neither I nor II.
59. In zoning, a use established after passage of a zoning ordinance, and in violation of it, is called
- (a) a non-conforming use.
 - (b) a variance.
 - (c) illegal.
 - (d) spot zoning.
60. Which one of the following debts is subject to the Homestead Exemption?
- (a) The purchase price of the Homestead property.
 - (b) Services rendered by a laborer or mechanic.
 - (c) \$1,000 promissory note to a bank.
 - (d) Street assessment.
61. Describing land boundaries, setting forth the lines together with terminal points and angles, is termed description by
- (a) acreage.
 - (b) metes and bounds.
 - (c) perimeter.
 - (d) lot and block number.
62. A document which transfers possession of real property, but does not transfer ownership is
- (a) a deed.
 - (b) a mortgage.
 - (c) a lease.
 - (d) a deposition.
63. When a deed which is delivered but not recorded is lost or destroyed, the legal title to the property described therein
- (a) remains in the grantee named in the last deed.
 - (b) reverts to the last former owner of record.
 - (c) escheats to the state.
64. The party to whom a deed conveys real estate is called the
- (a) grantee.
 - (b) grantor.
 - (c) beneficiary.
 - (d) recipient.
65. The word "escrow" refers to
- (a) a young crow.
 - (b) deposit of legal documents with a third person to be delivered upon the fulfillment of certain conditions.
 - (c) deposits of money in a bank, subject to withdrawal by depositor.
 - (d) safe deposit box where deed is placed.
66. A quit claim deed conveys the interest of the
- (a) grantee.
 - (b) mortgagee.
 - (c) grantor.
 - (d) lessee.
67. When real estate under lease is sold the lease
- (a) expires.
 - (b) remains binding upon new owner.
 - (c) must be renewed.
 - (d) is broken.
68. An acquired legal privilege or right of use or enjoyment falling short of ownership which one may have in the land of another is known as
- (a) a devise.
 - (b) an abstract.
 - (c) an easement.

- (d) a riparian right.
- 69. Property held in joint tenancy, upon the death of one of the tenants, passes to the
 - (a) landlord.
 - (b) state.
 - (c) heirs of the deceased.
 - (d) surviving owner.
- 70. A conveyance of title with the condition that the land shall not be used for the sale of intoxicating beverages or liquors creates
 - (a) a nuisance estate.
 - (b) an estate on condition subsequent.
 - (c) an estate on condition precedent.
 - (d) a reservation.
- 71. The only essential unity in a tenancy in common is
 - (a) equal right of possession.
 - (b) ownership to survivor.
 - (c) equal rights to heirs.
 - (d) none of these.
- 72. An absolute conveyance of real property would be by
 - (a) quit claim deed.
 - (b) assignment.
 - (c) warranty deed.
 - (d) deed of extinguishment.
- 73. Which of the following is necessary to the validity of the deed ?
 - (a) A seal.
 - (b) Acknowledgment.
 - (c) Recording.
 - (d) Delivery.
- 74. Two persons who contribute unequal shares of money for the purchase of a property own it as
 - (a) joint tenants.
 - (b) partners.
 - (c) tenants in common.
 - (d) tenants in severalty.
- 75. A description in a deed, giving directions and distances, is one by
 - (a) metes and bounds.
 - (b) lot and block.
 - (c) rectangular survey.
 - (d) principal meridian.
- 76. Which one of the following does not relate to lands and buildings?
 - (a) In rem.
 - (b) Hereditaments.
 - (c) Realtors.
 - (d) Subdivision.
- 77. Which one of the following may execute a deed for property sold by a municipality?
 - (a) The mayor.
 - (b) Superintendent of lands and buildings.
 - (c) President of City Council.
 - (d) Recorder of Deeds.
- 78. John Barr and Mary Miller take title to a residence as John Barr and Mary Barr, his wife, on September 26, 1975. Actually, they are not married. John died on March 3, 1978. Mary and John's mother, Anna, both claim title to the property. Under these circumstances:
 - (a) the property will go to Mary.
 - (b) the property will go to Anna.
 - (c) Mary and Anna will each own a one-half interest.

- (d) the property will escheat to the state.
- 79. A riparian owner holds land subject to
 - (a) egress and ingress rights.
 - (b) water rights.
 - (c) easement rights.
 - (d) dedication rights.
- 80. An encumbrance is anything which affects the
 - (a) grant deed.
 - (b) transfer of ownership.
 - (c) loan value.
 - (d) title.
- 81. If you contracted to sell the southwest quarter of the southwest quarter of the north-west quarter of a section of land, how many acres would pass by the deed ?
 - (a) 15 acres.
 - (b) 10 acres.
 - (c) 40 acres.
 - (d) 160 acres.
- 82. Deeds are recorded in the
 - (a) County Courthouse.
 - (b) City Hall.
 - (c) State Capitol building.
 - (d) office of the title company.
- 83. Restrictions in a deed are created by
 - (a) order of court.
 - (b) grantee.
 - (c) grantor.
 - (d) the municipality.
- 84. An instrument which transfers title to real estate may be
 - (a) assigned by the grantor.
 - (b) invalid, if not recorded within six years.
 - (c) valid if signed and recorded by grantee.
 - (d) valid if signed and delivered by grantor.
- 85. The appropriation of land by an owner to some public use together with acceptance for such use by or on behalf of the public, constitutes
 - (a) eminent domain.
 - (b) dedication.
 - (c) condemnation.
 - (d) adverse conveyance.
- 86. Land description by measure and direction in a deed is known as description by
 - (a) survey.
 - (b) lot and bounds block plan.
 - (c) monuments.
 - (d) metes and bounds.
- 87. If title to real property remains in the seller's name after it is sold on a monthly payment plan, the buyer would have purchased it under
 - (a) an F.H.A. mortgage.
 - (b) a conventional mortgage.
 - (c) a real estate contract.
 - (d) a V.A. approved mortgage.
- 88. A deed must
 - (a) contain the street address identification.
 - (b) state nature of the improvement on the land (dwelling).
 - (c) contain adequate description to identify the premises.
 - (d) state total area in the tract.
- 89. At the closing of a deal, which item is generally charged to the seller?

- (a) Recording fee for deed.
 - (b) Fire insurance.
 - (c) State revenue stamps.
 - (d) Attorney's examination.
90. Title to real property passes by voluntary alienation by
- (a) quit claim deed.
 - (b) grant deed.
 - (c) court decree.
 - (d) trustee in bankruptcy.
91. North and south boundaries of townships are created by
- (a) state surveyor.
 - (b) metes and bounds descriptions.
 - (c) court decree.
 - (d) base lines.
92. A riparian owner is one who owns land bordering on
- (a) a wild orchard.
 - (b) sub-marginal land.
 - (c) existing subdivision.
 - (d) a river or lake.
93. The person who cannot take an acknowledgment is
- (a) an alderman.
 - (b) a Justice of the Peace.
 - (c) an interested party.
 - (d) a judge.
94. A government official who evaluates property for tax purposes is an
- (a) assayer.
 - (b) assessor.
 - (c) administrator.
 - (d) surveyor.
95. Fraud is to truth as concealment is to
- (a) statute of frauds.
 - (b) misrepresentation.
 - (c) disclosure.
 - (d) duress.
96. The overhang of a porch or balcony beyond the established line of a parcel of land is known as
- (a) an easement.
 - (b) an encroachment.
 - (c) right of way.
 - (d) freeway.
97. The instrument which conveys title to a trustee is
- (a) a mortgage.
 - (b) trustee's guaranty.
 - (c) an indenture.
 - (d) trust deed.
98. An article may be changed from realty to personalty by
- (a) attachment.
 - (b) detachment.
 - (c) written declaration.
 - (d) order of court.
99. Adams deeds (fee simple) a property to Burns. The acknowledgment is defective:
- (a) the deed is void.
 - (b) the deed is valid.
 - (c) Adams can require Burns to pay additional consideration for a corrected deed.
 - (d) Burns can compel Adams to execute a correct deed.

100. Clauses in a deed are dictated by
 - (a) agreement of sale.
 - (b) the mortgagee.
 - (c) the F.H.A.
 - (d) Real Estate Commission.
101. A cloud on the title would probably be discovered upon
 - (a) application for a mortgage loan.
 - (b) delivery of deed.
 - (c) appraisal of the property.
 - (d) title examination.
102. In a zoning ordinance, a set-back is
 - (a) a court decision, which nullifies a provision in the zoning ordinance.
 - (b) distance between street and front of building.
 - (c) distance between side area of an adjoining building and subject building.
 - (d) distance that a public utility must observe in locating lines.
103. An acknowledgment to a deed must be made before
 - (a) an attesting witness to the deed.
 - (b) a court tipstaff.
 - (c) Recorder of Deeds.
 - (d) any qualified official.
104. Which one of the following does not refer to land use?
 - (a) Condominiums.
 - (b) Multiple listing.
 - (c) Licensing.
 - (d) County planning.
105. In connection with zoning, a variance granted is
 - (a) a non-conforming use.
 - (b) an exception to a statutory provision.
 - (c) a reference to the exterior design of a house.
 - (d) interior layout of a dwelling.
106. Rights to the use of, or access to, waterways are called
 - (a) water rights.
 - (b) marine rights.
 - (c) portage rights.
 - (d) riparian rights.
107. What is the maximum number of grantees that can be named in a deed?
 - (a) Two.
 - (b) Any number.
 - (c) Four.
 - (d) Ten.
108. Property is identified in a conveyance instrument by the
 - (a) habendum.
 - (b) consideration.
 - (c) description.
 - (d) the warranty.
109. A proper escrow, once established, should be
 - (a) held by a licensed broker.
 - (b) voidable at the seller's option.
 - (c) voidable at option of either buyer or seller.
 - (d) beyond the control of any one interested party.
110. First grant or patent in chain of title is issued by
 - (a) a sovereign power.
 - (b) U.S. Government Patent Office.
 - (c) the recorder of deeds.
 - (d) the grantee of a fee simple deed.

111. A widow who is willed the use of the family home for the rest of her natural life, with provision that it shall go to the children upon her death, holds
- (a) no interest in the property.
 - (b) a fee simple estate.
 - (c) a leasehold.
 - (d) a life estate.
112. Chain of title means
- (a) a measurement used by a surveyor.
 - (b) a listing of all recorded instruments affecting the subject title.
 - (c) certificate of title.
 - (d) heirs named in a will to inherit property after death of testator.
113. The right of a water company to lay and maintain water mains along a designated line in the rear of a lot would be called
- (a) an encroachment right.
 - (b) an easement.
 - (c) adverse possession.
 - (d) an appurtenance.
114. A title insurance policy, standard form, insures
- (a) that there are no judgment liens against the property.
 - (b) that the property is free and clear of all encumbrances.
 - (c) the title only as it appears of record, subject to stated exceptions.
115. Property of a person who dies intestate, leaving no heirs, passes to the state by
- (a) escheat.
 - (b) eminent domain.
 - (c) adverse possession.
 - (d) condemnation.
116. A section of land is
- (a) 360 acres.
 - (b) 6 miles square.
 - (c) 6 square miles.
 - (d) 1 mile square.
117. Dolan executed a deed to his nephew, Wright, which recites the consideration as "love and affection." Wright orally promised to pay Dolan's living expenses, but failed to do so. Under these circumstances,
- I. the deed is invalid.
 - II. the deed can be reformed.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
118. Bates, owner of a property serviced by a driveway, entered into a bilateral agreement with his neighbor, Carter, to use the driveway, if Carter would remove stone steps to his sun parlor, which abutted the driveway. Under this agreement, Carter had
- I. an appurtenant easement.
 - II. an easement in gross.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) either I nor II.
119. A restriction in a deed stated that "no temporary trailer nor any mobile home" would be erected on the property. Under this provision,
- I. the buyer could place a house trailer.
 - II. the buyer could erect a mobile home.
- (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
120. Under a zoning ordinance of the Harbor Estates Village, recreational use was described as including golf courses, boat harbors and bathing beaches. Adams asked for a permit for a drive-in theatre, which was refused.
- (a) The permit should be granted.
 - (b) The promoter should post bond to protect the municipality against damage suits.
 - (c) The ordinance should be repealed.
 - (d) Enforcement of the ordinance should be waived.
121. The party appointed by a court to settle a deceased person's estate is
- (a) a trustor.
 - (b) a trustee.
 - (c) a guardian.
 - (d) an administrator.
122. A description reading: the S¹/₂ of the SE¹/₄ of the NW¹/₄ of the NE¹/₄ of a section of land contains
- (a) 15 acres.
 - (b) 12¹/₂ acres.
 - (c) 10 acres.
 - (d) 5 acres.
123. A valid declaration of homestead may be filed on a home by
- (a) the lessee.
 - (b) trustee.
 - (c) mortgagee.
 - (d) head of family.
124. The number of square feet in an acre of ground is
- (a) 5,280.
 - (b) 25,120.
 - (c) 43,560.
 - (d) 50,560.
125. Townships and ranges are characteristic of
- (a) subdivisions.
 - (b) government surveys.
 - (c) municipalities.
 - (d) title insurance.
126. In the West a township is
- (a) an incorporated city.
 - (b) a 640-acre plot of land.
 - (c) five square miles.
 - (d) six miles square.
127. Which of the following are incompetent to execute a deed?
- (a) Minor.
 - (b) Widow.
 - (c) Intoxicated person.
 - (d) Single woman.
 - (e) Insane person.
 - (f) Man over 80 years of age.
128. Deeds are acknowledged
- (a) to make them legal.
 - (b) to enable them to be recorded.
 - (c) because of ancient custom.
 - (d) to establish legal capacity.
 - (e) to terminate a lease by tenant.
129. A "quit claim" deed is used to
- (a) correct a defect in description.

- (b) convey a life estate.
 - (c) pass an absolute fee simple estate.
130. Which of the following forms of deeds have one or more guarantees of title?
- (a) Quit claim deed.
 - (b) Warranty deed.
 - (c) Executor's deed.
131. Creating an easement refers to
- (a) cost or design of dwelling.
 - (b) set back from street.
 - (c) giving someone the right, privilege or advantage to use the property.
 - (d) renting it on a temporary basis.
132. A system of registration by which the state guarantees the title to the land is called
- (a) Torrens system.
 - (b) Land Registration.
 - (c) Land Equalization System.
 - (d) Land Protection System.
133. Which of the following are essentials to a deed of real estate?
- (a) Covenant of seizin.
 - (b) Description.
 - (c) "Habendum" clause.
 - (d) Signature of seller.
 - (e) Signature of buyer.
134. A deed which carries with it the implied rights of survivorship is called a
- (a) warranty deed.
 - (b) grant deed.
 - (c) joint tenancy deed.
 - (d) power of attorney.
135. Title to real estate passes to the grantee at the time the deed is
- (a) written.
 - (b) delivered.
 - (c) notarized.
 - (d) signed.
136. Real property owned by husband or his wife prior to their marriage is presumed to be
- (a) community property.
 - (b) separate property.
 - (c) personal property.
 - (d) tenancy in common.
137. A quit claim deed conveys only the interest of the
- (a) grantee.
 - (b) property.
 - (c) claimant.
 - (d) grantor.
138. A declaration of homestead is an instrument recorded in the Recorder's office for the purpose of
- (a) acquiring title to property.
 - (b) conveying property to another.
 - (c) exempting property from execution.
 - (d) satisfying a debt.
139. An authorization to a person to act for and in behalf of another in his absence is called
- (a) an option.
 - (b) an easement.
 - (c) a power of attorney.
 - (d) a release.
140. Which of the following are real estate and pass under a common warranty deed?
- (a) Chandeliers in a house.

- (b) Awnings.
 - (c) Furnace.
 - (d) The fence surrounding the property.
 - (e) A portable gas stove.
 - (f) The rock garden.
141. The right to cross over property owned by another is called
- (a) adverse possession.
 - (b) an easement.
 - (c) a homestead.
 - (d) a lien.
142. Unpaid taxes on real estate become
- (a) a lien.
 - (b) an easement.
 - (c) a judgment.
 - (d) none of these.
143. If the city wishes to take property for public improvements, it may acquire title by action based on
- (a) attachment proceedings.
 - (b) right of eminent domain.
 - (c) suit to quiet title.
 - (d) adverse possession rights.
144. The relinquishment of some right, claim or interest to a person who already has some interest in the property is known as a
- (a) forbearance.
 - (b) extinguishment
 - (c) release.
 - (d) remainder.
145. Where a life tenant conveys real estate during his lifetime to another, the grantee is known as
- (a) the sub-tenant.
 - (b) the junior tenant.
 - (c) tenant per autre vie.
 - (d) remainder tenant.
146. Taking of property for public use is
- (a) zoning.
 - (b) condemnation.
 - (c) escheat.
 - (d) reversion.
147. An instrument which requires recordation to be legally effective is a
- (a) mechanic's lien.
 - (b) agreement to sell real estate.
 - (c) will.
 - (d) deed.
148. An easement is *not* extinguished by which one of the following:
- (a) decision of the property owner.
 - (b) when necessity no longer exists.
 - (c) release.
 - (d) abandonment.
149. Which one of the following applies to ownership of land:
- (a) tenancy in common.
 - (b) tenancy at will.
 - (c) tenancy for years.
 - (d) tenancy of sufferance.
150. John L. Davis Jr. and Marie E., his wife, own property jointly. In deeding it, the wife should sign

- (a) Mrs. John L. Davis Jr.
 - (b) Marie E. Davis Jr.
 - (c) Marie E. Davis.
 - (d) in her maiden name (Marie E. Dutch), now Mrs. John L. Davis Jr.
151. A charge levied against real estate for municipal functions is
- (a) an assessment.
 - (b) a tax.
 - (c) a lien.
 - (d) a judgment.
152. In order for a buyer to be certain that the property he is purchasing has no encroachment, he should obtain
- (a) purchaser's policy of title insurance.
 - (b) survey.
 - (c) certificate of no defense.
 - (d) warranty deed.
153. The grantor's guarantee that he is the owner of the property and has the power to convey title is called the covenant of
- (a) further assurance.
 - (b) seizin.
 - (c) quiet enjoyment.
 - (d) warranty.
154. Eminent domain is
- (a) a public park.
 - (b) a country home.
 - (c) property owned by the federal government.
 - (d) power to take property for public use.
155. A person who has real estate devised to him by a relative is said to have acquired title by
- (a) adverse possession.
 - (b) inheritance.
 - (c) reversion.
 - (d) release.
156. Condemnation of private property for public use is called the right of
- (a) eminent domain.
 - (b) municipalities.
 - (c) acquisition.
 - (d) acquirement.
157. The rights to the water thereon of a person owning land containing or bordering upon a stream are called
- (a) water rights.
 - (b) riparian rights.
 - (c) eminent domain.
 - (d) a reservation.
158. A clear title to real estate may be assured by securing
- (a) a warranty deed.
 - (b) an abstract of title.
 - (c) a policy of title insurance.
 - (d) a guarantee of title.
159. Brown purchases property from Adams. Adams later gives another deed to Clark. Notice of Brown's interest may exist because of
- (a) possession of abstract of title.
 - (b) possession of property by Brown.
 - (c) possession of adjoining property by Brown.
 - (d) possession of deed by Brown.
 - (e) Adams's not paying taxes.

160. A quit claim deed is of as much practical value to the grantee as a warranty deed would be
- (a) if the grantee is insolvent.
 - (b) if the grantee is not given an abstract.
 - (c) if the title is not good and merchantable.
 - (d) if the grantor is not financially able to back up his warranty.
 - (e) if the grantee loses his deed.
161. A policy of title insurance "purchaser's form" insures the record title in the name of
- (a) the mortgagee.
 - (b) a broker.
 - (c) the grantor.
 - (d) the grantee.
162. One who acquires property under a deed is
- (a) an optionee.
 - (b) a vendee.
 - (c) a grantee.
 - (d) a trustee.
163. Severalty ownership is ownership
- (a) by several persons.
 - (b) by title passing to the survivors upon death of one.
 - (c) of an undivided interest in property.
 - (d) by one person only.
164. A homestead right is surrendered by recording
- (a) a satisfaction.
 - (b) an abandonment.
 - (c) a release.
 - (d) a reconveyance.
165. Which of the following is generally true of easements?
- (a) Created by verbal agreement.
 - (b) Cannot be revoked.
 - (c) Are of temporary duration.
 - (d) Are purely personal rights and do not run with the land.
166. Owner of an undivided interest in land with no right of survivorship owns it by
- (a) joint tenancy.
 - (b) severalty.
 - (c) absolute ownership.
 - (d) tenancy in common.
167. Police power is the right of government
- (a) to escheat property to the state.
 - (b) to dedicate abandoned property for public use.
 - (c) to establish precincts for deploy of foot and mobile law enforcers.
 - (d) none of these.
168. Which one of the following is not an appurtenance?
- (a) Right of way.
 - (b) Easement for egress and ingress.
 - (c) A garage.
 - (d) Driveway serving two properties.
169. Which indicia of the following pertain to fee simple ownership?
- (a) Can mortgage the property.
 - (b) Can alien the property.
 - (c) Can devise the property.
 - (d) All of these.
170. Abbott sold his residence to Charters, a broker, for \$40,000 cash. The state has a \$1 per \$1,000 consideration deed transfer tax. Charters placed \$60 in stamps on the deed before recording. Under these circumstances:

- I. the deed is void.
 - II. the Real Estate Commission would have power to discipline Charters.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
171. Horne sold a tract of land next to his residence to Bellows in 1977. The deed contained a covenant against the building of any structure by Bellows which would interfere with Horne's view of a lake a half-mile distant. Upon Horne's death in 1977, his heirs sold the residence to Greene in 1978 who filed plans with the city for a nine-story apartment building which will obscure a view of the lake. Under these circumstances, the restriction
- (a) is a covenant running with the land and the building will be enjoined.
 - (b) is a personal covenant, which terminated at Horne's death.
 - (c) will not be enforced, as a form of unjust enrichment.
 - (d) is enforceable, as consonant with public policy.
172. Title to fixtures, shelves, counters, and merchandise is transferred or conveyed by
- (a) deed.
 - (b) bill of sale.
 - (c) chattel mortgage.
 - (d) escrow.
173. The tax on a given piece of real estate is determined by multiplying the tax rate (millage) by
- (a) the selling price.
 - (b) appraised value of the property.
 - (c) insured value.
 - (d) assessed valuation.
 - (e) market value, less depreciation.
174. The legal rights which a wife has in her husband's property at his death are known as
- (a) curtesy.
 - (b) dower.
 - (c) share by entirety.
 - (d) share by survivorship.
175. The title to land held in absolute ownership is called
- (a) estate for years.
 - (b) a leasehold.
 - (c) fee simple.
 - (d) a base fee.
176. In order to accurately determine the boundaries of real property, one should obtain
- (a) a title policy.
 - (b) a survey.
 - (c) an abstract.
 - (d) a decree of court.
177. The state of ownership in real property by which the husband and wife hold title to real estate and in which the right of survivorship cannot be destroyed by either party is known as
- (a) estate in joint tenancy.
 - (b) estate by entirety.
 - (c) estate in common.
 - (d) estate by dower right.
178. The law which requires certain contracts to be in writing in order to be enforceable is called the
- (a) written instrument law.
 - (b) parol evidence law.
 - (c) statute of limitations.

- (d) statute of frauds.
- 179. A roadway over Taylor's land existed for 25 years. Wagner sought a court decree for a perpetual easement and an injunction against interference. Heretofore, Taylor gave permission for its use to people asking permission. Under these circumstances, the court should:
 - I. grant a decree for an easement.
 - II. grant a perpetual injunction, preventing Taylor from obstructing the roadway or interfering with Wagner's use:
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 180. A policy of title insurance in favor of the mortgagee will also insure
 - (a) the owner.
 - (b) the buyer.
 - (c) the buyer's purchases.
 - (d) no other person.
- 181. An absolute conveyance of real property would be by a
 - (a) mortgage deed.
 - (b) general warranty deed.
 - (c) quit claim deed.
 - (d) gift deed.
- 182. When a notary public or other qualified official attests to the signature on a deed or mortgage, it is called an
 - (a) authorization.
 - (b) acknowledgment.
 - (c) execution.
 - (d) authentication.
- 183. At the closing of a deal, which item is generally chargeable to the seller?
 - (a) Recording deed.
 - (b) Title insurance.
 - (c) State Deed Transfer stamps (if required).
 - (d) Survey.
- 184. Mrs. Elsie M. Sims, wife of Alfred D. Sims, should sign a deed to real estate in which manner?
 - (a) Elsie M. Sims.
 - (b) Mrs. Alfred D. Sims.
 - (c) Mrs. Alfred D. (Elsie M.) Sims.
- 185. When speaking of "improvements" regarding real estate, it means
 - (a) fences, wells, drains, roadways, etc.
 - (b) everything except the land.
 - (c) additions made to the original house.
- 186. Creating an easement means
 - (a) restricting the style or cost of a house which can be built in a subdivision of lots.
 - (b) placing a dwelling over your property line onto another's property.
 - (c) giving someone the right, advantage, or privilege to use your land.
- 187. The owner of an undivided part of the whole is a
 - (a) tenant in common.
 - (b) joint tenant.
 - (c) remainderman.
 - (d) partner.
- 188. In order for a would-be buyer of real estate to be certain of the validity of the title, he should order
 - (a) a survey.
 - (b) a title search.

- (c) an estoppel certificate.
- 189. If Jane White and James White, her husband, are living together on property legally described, a deed conveying the property to a purchaser, signed only by the wife, Jane, may be valid when
 - (a) it is recorded.
 - (b) property was acquired by wife before marriage (in community property states).
 - (c) the husband is out of the state.
 - (d) all liens are paid.
- 190. An encumbrance on real estate may be
 - (a) unpaid broker's commission.
 - (b) live stock.
 - (c) easement granting another a right of way over land.
 - (d) a building.
- 191. If you wish to have a driveway over your neighbor's yard, which instrument would you use?
 - (a) A quit claim deed.
 - (b) Easement.
 - (c) Assignment of contract.
 - (d) Estoppel certificate.
- 192. For which reason or reasons is a deed recorded?
 - (a) Insures certain title.
 - (b) Gives notice to the world.
 - (c) Required by the state.
 - (d) Saves title insurance cost.
- 193. Tenancy in common is holding by several persons by unity of possession and also by
 - (a) several and distinct titles.
 - (b) unity of time.
 - (c) owning to the same interest.
 - (d) right of survivorship.
- 194. Ownership of property is transferred
 - (a) when grantor signs the deed.
 - (b) when the grantor's signature has been notarized.
 - (c) when delivery of the deed is made.
 - (d) when the correct documentary stamps are put on deed and cancelled.
- 195. The deed to a purchaser must include
 - (a) legal description of property.
 - (b) survey.
 - (c) title report.
 - (d) a recital how grantor obtained title.
- 196. A valid deed must contain
 - (a) the grantee's signature.
 - (b) an acknowledgment.
 - (c) evidence of recordation.
 - (d) a granting clause.
- 197. A notice of abandonment is recorded to release a
 - (a) mortgage.
 - (b) chattel real.
 - (c) declaration of homestead.
 - (d) listing.
- 198. A widow who is willed the use of the family home for the rest of her natural life, with provision that it shall go to the children upon her death, holds
 - (a) no interest in the property.
 - (b) a fee simple.
 - (c) a leasehold.
 - (d) a life estate.

199. Chain of title means
- (a) a measurement used by a surveyor.
 - (b) the last deed of record.
 - (c) a part of the history of all instruments affecting the particular tract of ground.
 - (d) a secured policy of title insurance.
200. A charge levied by a local government to finance street paving is
- (a) an ad valorem tax.
 - (b) a zoning charge.
 - (c) an equalizer.
 - (d) an assessment.
201. The sovereign power in determining title to land is
- (a) the municipality.
 - (b) the State Supreme Court.
 - (c) the Attorney General.
 - (d) the Real Estate Commission.
202. In an escrow which document would not properly belong?
- (a) Contract of sale.
 - (b) Warranty deed.
 - (c) Trust deed note.
 - (d) Insurance binder.
203. Deed is to property as a will is to
- (a) heir.
 - (b) probate.
 - (c) estate.
 - (d) court.
204. A deed delivered in escrow is given to
- (a) the buyer's attorney.
 - (b) the seller's attorney.
 - (c) the mortgagee.
 - (d) a neutral third party.
205. A perch or rod is a unit of land measuring
- (a) $16\frac{1}{2}$ feet.
 - (b) 66 feet.
 - (c) 12 feet.
 - (d) $21\frac{1}{2}$ feet.
206. Et Ux is an abbreviation for "et uxor" meaning
- (a) and husband.
 - (b) and father.
 - (c) and wife.
 - (d) parties of the second part.
207. A quarter section of land is
- (a) 240 acres.
 - (b) 160 acres.
 - (c) 440 acres.
 - (d) 250 acres.
208. An agreement of sale was signed by Hays, before marriage. Later, the wife refuses to sign the deed, but the deed, signed by the husband above, is accepted by the buyer. One year later, the husband dies. Under these circumstances:
- I. the deed is valid.
 - II. the widow is entitled to the value of her dower interest.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
209. Alberts purchased a restaurant and building in a municipal zone permitting restaurants.

The zoning code prohibited the service of alcoholic beverages in the same retail district. The state liquor control board issued a license to Alberts. Under these circumstances:

- I. the liquor control board's license to Albert is valid.
 - II. the municipality should repeal the law, excluding sale of alcoholic beverages.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
210. The city of Adelphia passed an ordinance defining a one-family residence, which excluded unmarried persons. Four college students rented one apartment. The city claimed the occupancy was in violation of the ordinances. Under these circumstances:
- I. the ordinance should be amended.
 - II. the ordinance is discriminatory and illegal.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
211. A deed was made to John Steele and wife, without naming her. The deed creates
- (a) an estate in severalty.
 - (b) a tenancy in common.
 - (c) an estate by the entireties.
 - (d) the deed is invalid.
212. A deed description refers to a plat of the property recorded in the County Recorder of Deeds Office. Under these circumstances:
- I. the deed description would be valid.
 - II. the deed would have to be redrawn.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
213. A notary commission expires on January 31, 1978. He may take a valid acknowledgment
- (a) if he applies for renewal before Jan. 31, 1978.
 - (b) within 30 days after Jan. 31, 1978.
 - (c) no time after Jan. 31, 1978.
214. That covenant which is construed to mean that the grantor covenants that he has the exact interest in the property that the deed purports is a
- (a) covenant of further assurance.
 - (b) covenant of warranty.
 - (c) covenant of the right to convey.
 - (d) covenant of seizin.
215. The addition of one's land by the gradual deposit of soil through natural causes is
- (a) annulation.
 - (b) sedimentation.
 - (c) accretion.
 - (d) ademption.
216. The voluntary parting with the ownership of real property is
- (a) adverse possession.
 - (b) alienation.
 - (c) forfeiture.
 - (d) eminent domain.
217. That which gives the appearance of title, but is not title in fact is
- (a) exoneration.
 - (b) redemption.

- (c) color of title.
- (d) subordination.
- 218. A grantor limits his liability to the grantee to anyone claiming, by, from, through or under him, with a
 - (a) special warranty deed.
 - (b) a quit claim deed.
 - (c) a general warranty deed.
 - (d) a sheriff's deed.
- 219. Devise is a
 - (a) sum of money for real estate.
 - (b) gift of real estate by will.
 - (c) method to obtain title without deed, in a court action.
- 220. Any interest in, or right to, land by third persons, adversely affecting the value of the property is an
 - (a) encumbrance.
 - (b) encroachment.
 - (c) appurtenance.
 - (d) escrow.
- 221. An instrument which transfers possession of real property but does not transfer ownership is a
 - (a) deed.
 - (b) mortgage.
 - (c) satisfaction piece.
 - (d) lease.
- 222. Tender of deed is unnecessary where
 - (a) time is of the essence.
 - (b) date for performance has expired.
 - (c) comprehensive insurance policy has expired.
 - (d) there is an anticipatory repudiation by buyer in the sales agreement.
- 223. Limitations on the use and enjoyment of property are called
 - (a) remainders.
 - (b) hereditaments.
 - (c) tenements.
 - (d) restrictions.
- 224. Which of the following would be held to be void and pass no title even in favor of an innocent purchaser?
 - (a) A quit claim deed.
 - (b) A forged deed.
 - (c) A bargain and sale deed.
 - (d) A trustee's deed.
- 225. Under the early English common law, transfer of title to real property by delivery of possession was called
 - (a) livery of seizin.
 - (b) adverse possession.
 - (c) chancery.
 - (d) laissez-faire.
- 226. Adams hands deed to Beal with the intent to pass title, but with an oral request not to record the deed until after Adam's death.
 - (a) Beal must comply or the deed will not be valid.
 - (b) Valid delivery has occurred.
 - (c) Delivery will not occur until Adam's death.
 - (d) The deed is void.
- 227. Where an agreement of sale has been recorded, and a quit claim deed is used to extinguish it, the deed should be signed by
 - (a) the vendor.

- (b) the vendee.
 - (c) the notary public who took the acknowledgment.
 - (d) the broker, who prepared the sales agreement.
228. Abstract of title is a
- (a) contract for deed.
 - (b) condensed history of the title.
 - (c) guarantee of title.
 - (d) rough painting of the property.
229. A quit deed may also be known as a
- (a) special warranty deed.
 - (b) bargain and sale deed.
 - (c) reformation deed.
 - (d) satisfaction claim deed.
230. The right to light and air accompanied by the transfer of title ownership to the land is called an
- (a) alienable right.
 - (b) restriction.
 - (c) appurtenance.
 - (d) easement.
231. It is the usual function of City Planning Commissions to pass upon
- (a) new homes.
 - (b) new apartment buildings.
 - (c) new garages.
 - (d) new subdivisions.
232. A zoning ordinance is a
- (a) restriction.
 - (b) easement.
 - (c) lien.
 - (d) appurtenance.
233. An area of land set off by local ordinance for a specific use is called
- (a) a subdivision.
 - (b) a zone.
 - (c) public improvement.
 - (d) cul de sac
234. A freehold interest in land that is to end with the life of the grantee is known as
- (a) an estate at will.
 - (b) an estate sufferance.
 - (c) life estate.
 - (d) annuity.
235. Lines of meridian run
- (a) east and west.
 - (b) any direction depending upon location of property.
 - (c) easterly or westerly from baselines.
 - (d) north and south.
236. The column of townships running north and south is referred to as
- (a) checks.
 - (b) ranges.
 - (c) divisions.
 - (d) tracts.
237. A wall erected on a line between two adjoining properties belonging to two different persons is a
- (a) share wall.
 - (b) party wall.
 - (c) live wall.
 - (d) community wall.

238. Anything that is permanently fastened or attached to real estate is
- (a) an attachment.
 - (b) real estate.
 - (c) personal property.
 - (d) a chattel.
239. A purchaser should obtain which one of the following to be sure there is no encroachment:
- (a) title insurance policy.
 - (b) survey.
 - (c) declaration of no set off certificate.
 - (d) each of the above.
240. An owner of land containing or bordering upon a stream, has rights to the water known as
- (a) water rights.
 - (b) riparian rights.
 - (c) alluvion rights.
 - (d) allodial rights.
241. In a joint ownership, which one of the following unities is not present:
- (a) possession.
 - (b) time.
 - (c) title.
 - (d) location.
 - (e) interest.
242. In numbering a township, section 6 is always on the
- (a) northeast corner.
 - (b) southeast corner.
 - (c) northwest corner.
 - (d) southwest corner.
243. If a municipality wishes to obtain title to property from an owner unwilling to sell, it can proceed by
- (a) right of eminent domain.
 - (b) attachment proceedings.
 - (c) action to quiet title.
 - (d) adverse possession.
244. Words of conveyance are essential in the
- (a) listing contract.
 - (b) agreement of sale.
 - (c) deed.
 - (d) bill of sale.
245. The $S\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of a section contains
- (a) 20 acres.
 - (b) 40 acres.
 - (c) 80 acres.
 - (d) 160 acres.
246. The section in the northwest corner of a township is
- (a) section # 1.
 - (b) section # 7.
 - (c) section # 6.
 - (d) none of these.
247. Partners usually own real property as
- (a) tenants by the entireties.
 - (b) joint tenants.
 - (c) tenants in common.
 - (d) tenants in severalty.
248. Owner of an undivided interest in land with no right of survivorship owns it as

- (a) tenant in common.
 - (b) joint tenant.
 - (c) tenant in futuro.
 - (d) none of these.
249. Zone R-1 is restricted to
- (a) refrigeration plant or the like.
 - (b) rolling mill plant or the like.
 - (c) single family homes.
 - (d) hospital or school.
250. An example of involuntary alienation is where the title to real estate passes by
- (a) quit claim deed.
 - (b) trustee deed.
 - (c) grant deed.
 - (d) sheriff's deed.
251. Which of these may not be considered an appurtenance
- (a) bar.
 - (b) garage.
 - (c) orchard.
 - (d) Revolutionary chestnut tree.
252. A light company lays and maintains concealed electric along an agreed-upon line with owner. It does so by right of
- (a) eminent domain.
 - (b) condemnation.
 - (c) an easement.
 - (d) a sub-surface appurtenance.
253. John Cooke and Mary Cooke, wife, have owned their home by the entireties. On September 15, 1977, they were divorced. The property is now owned thus:
- (a) each owns property in severalty.
 - (b) each is a tenant in common.
 - (c) they own property as joint tenants.
 - (d) they own property as partners.
254. Which of the following is usually paid by the buyer:
- (a) recording the deed.
 - (b) acknowledgment to the deed.
 - (c) cost for preparing deed.
255. Ownership by an individual is ownership in
- (a) severalty.
 - (b) joint tenancy.
 - (c) in choate.
 - (d) severance.
256. The summary of the most important parts of all instruments comprising the record title of the seller, arranged in chronological order is known as
- (a) indenture.
 - (b) abstract of title.
 - (c) certificate of title.
 - (d) history of title.
257. Elizabeth Mae Bower, who owns a home, married Oliver Stacy on January 21, 1976. Stacy died on December 1, 1977. On June 30, 1978, she sells the property to Alfred Sawyer. She should sign the deed
- (a) Mrs. Oliver Stacy.
 - (b) Elizabeth Bower Stacy.
 - (c) Elizabeth Mae Stacy.
 - (d) Elizabeth Mae Stacy, formerly Elizabeth Mae Bower.
258. A township ordinance provided for apartment construction in only 80 acres out of 11,500 acres in the township. A subdivider challenged that the ordinance was exclusion-

- ary and did not provide "a fair share" of the land for apartments. The ordinance
- (a) is invalid.
 - (b) is valid.
 - (c) provides that apartment structures can be built, if reasonable as to height and number of units.
259. A property is deeded to John Gates, "his heirs and assigns." By will, Gates leaves the property to his nurse, Lucy Gibbons. Two sons, Adam and Earl, claim the property upon John's death.
- (a) Each son now owns a one-half interest.
 - (b) Each son now owns a one-fourth interest and Lucy owns one-half.
 - (c) Lucy owns the entire property.
 - (d) The property escheats to the state.
260. Words of conveyance is an essential element in a (an)
- (a) bill of sale.
 - (b) deed.
 - (c) contract of sale.
 - (d) exclusive listing contract.
261. The party responsible for payment of the title closing costs is determined by
- (a) agreement of the parties.
 - (b) broker.
 - (c) title officer.
 - (d) local Real Estate Board.
262. A law which prohibits certain legal actions from taking place during a period of emergency is called
- (a) statute of limitations.
 - (b) bill of rights.
 - (c) declaration relief.
 - (d) moratorium.
263. Trust deeds are used to
- (a) transfer stock certificates to a seller.
 - (b) protect sub-contractors.
 - (c) borrow money.
 - (d) transfer property from one co-owner to another co-owner.
264. Delinquent taxes are considered to be
- (a) easements.
 - (b) personalty.
 - (c) liens.
 - (d) attachments.
265. The dominant tenement is the property
- (a) upon which the burden is imposed.
 - (b) in whose favor the burden is created.
 - (c) the top story in an apartment building.
 - (d) owned by a person having the largest interest.
266. Where the state requires documentary transfer stamps, the stamp must be affixed to a
- (a) bill of sale.
 - (b) agreement of sale.
 - (c) warranty deed.
 - (d) mortgage.
267. The number of square feet in an acre after vacant property is zoned:
- (a) 46,530.
 - (b) 43,650.
 - (c) 43,560.
 - (d) 36,350.
268. The person for whom the beneficial trust in a deed is held in a trust instrument is the
- (a) grantee.

- (b) grantor.
 - (c) escrowee.
 - (d) cestui que trust.
269. A, B and C own property as joint tenants. C dies and B sells his interest in the property to D. The property is now owned
- (a) as joint tenants by A, D and C's widow E, his sole heir.
 - (b) by A and D as joint tenants.
 - (c) by A and D as tenants in common.
 - (d) none of these.
270. A and B, husband and wife, own their home as tenants by the entirety. B obtains a divorce from A, one year after the purchase. The property is now owned
- (a) by A and B in severalty.
 - (b) by A and B as joint tenants.
 - (c) A and B continue to hold title by the entireties.
 - (d) by A and B as tenants in common.
271. A, single, and B, married, who are partners, acquire property with partnership funds and take title in the partnership name. Shortly thereafter, A marries C and subsequently A died. The property is now owned
- (a) by B and C as tenants in common.
 - (b) by B.
 - (c) by B and C as joint tenants.
 - (d) none of these.
272. Et al is an abbreviation for
- (a) and wife.
 - (b) and another.
 - (c) and so forth.
 - (d) as follows.
273. The total area of a homestead is limited by
- (a) agreement of seller and buyer.
 - (b) law.
 - (c) partition proceedings.
 - (d) zoning.
274. In order to take advantage of a capital gains tax on a real estate purchase and sale, the property must be held for at least
- (a) 30 days.
 - (b) 6 months.
 - (c) one year.
 - (d) two years.
275. In a recorded plan, the lots are usually described by
- (a) metes and bounds.
 - (b) lot number.
 - (c) zone.
 - (d) street and number.
276. The initial conveyance of real property from the Federal Government to an individual is by
- (a) Act of Congress.
 - (b) deed from Secretary of the Interior.
 - (c) U.S. Register of deeds.
 - (d) patent.
277. Which one of the following, if any, would be grounds for voiding a deed because of the recital of an improper consideration? The property sold for \$20,500.
- (a) \$21,000.
 - (b) \$1.
 - (c) \$20,000.
 - (d) None of these.

278. Actual notice to a prospective buyer of ownership would occur where
- (a) the mortgagee told the prospect the identity of the owner.
 - (b) tenant in possession gave name of absent owner.
 - (c) adverse claimant in possession claims title.
 - (d) there is a recorded deed to vendor.
279. A husband separated from his wife and children listed a property for sale with a broker. The wife and children are in possession of the premises. Upon obtaining a signed agreement from the husband, the wife refuses to sign the deed or move. The buyer sues for specific performance. He cannot succeed because
- (a) he had actual notice of wife's occupancy.
 - (b) the buyer failed to record the agreement of sale.
 - (c) the broker should not have listed the property.
 - (d) the state inheritance laws prevent.
280. A deed executed and delivered, but not recorded, is
- (a) void.
 - (b) voidable.
 - (c) valid.
 - (d) unenforceable.
281. Hereditaments include
- (a) the lands and chattels used thereon.
 - (b) property inherited under intestacy laws.
 - (c) lands, buildings and easements.
 - (d) real property acquired by court decree.
282. An escrow, once established, is
- (a) subject to withdrawal by either party.
 - (b) subject to rescission only by the seller.
 - (c) subject to rescission only by the buyer.
 - (d) none of these.
283. A base or qualified fee is
- (a) a sale of land with a number of easements.
 - (b) a sale for a particular use or purpose (school or church) and where such use is ended, property reverts to grantor.
 - (c) tenure by adverse use until real owner brings court action to reclaim title.
 - (d) a term in description of land acquired by patent.
284. A base or qualified fee results
- (a) when purpose for which the property was granted is abandoned.
 - (b) when life tenant dies.
 - (c) when property is leased for an uncertain term.
 - (d) none of these.
285. In zoning, a use granted in violation of an enacted ordinance is
- (a) void.
 - (b) non-conforming.
 - (c) a variance.
 - (d) spot zoning.
286. In real estate transactions in Wisconsin all of the following documents except one are usually recorded in the appropriate office of the Register of Deeds:
- (a) deed.
 - (b) land contract.
 - (c) offer to purchase.
 - (d) mortgage.
 - (e) purchase money mortgage.
287. Bates developed a subdivision in 1940. Each deed to the purchaser contained a restriction "no building except a private dwelling house shall be erected on said lot." Curtis, a purchaser of two lots, sold them to Bacon in 1973. On February 21, 1974, Bacon started to excavate for the erection of a four story garden type apartment building. Since 1960,

the street has been widened to a four lane artery, a pony league baseball park has been built across the street, flanked by several business establishments. Under these circumstances:

- I. the apartment building will be permitted.
 - II. the apartment building will be permitted upon damages in favor of the protesting property owners.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
288. In determining whether an article is realty or personalty, the test to be employed is:
- I. manner of annexation to the dwelling.
 - II. intention of the grantor when the item in question was installed.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
289. The City of Garden Valley passed an ordinance, prohibiting "For Sale" signs in residential areas. Broker Hal Forbes sues to have the ordinance voided, as unrelated to the public good or welfare. The ordinance is:
- (a) valid.
 - (b) invalid.
 - (c) should be amended.
 - (d) zone should be changed.
290. Albert's will devises his property, one-half to his son, Bert, one-sixth to a nephew, Harold, and two-sixths to a niece, Mabel, as tenants in common. The Acme Motor Co. has a judgment lien against Bert and sells his share in the property at sheriff's sale to satisfy its judgment. The effect of the sale is:
- I. the sheriff's sale is void.
 - II. the Acme Motor Co. becomes an owner in common with Harold and Mabel.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
291. The state of Texas has taken all of Hester's property for a four lane highway. Under these circumstances:
- I. the condemnee is entitled to moving expenses, as well as other expenses incurred by the relocation.
 - II. the state must pay such expenses directly to the creditors.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
292. A property owned and used by the owner, was taken by the City of Wilmington, Delaware. The owner claimed damages for the loss of his restaurant business and loss of liquor license, as well as the real estate.
- I. The owner is entitled to damages for loss of the restaurant business, as such.
 - II. Owner is entitled to damages for loss of liquor license.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
293. In an eminent domain proceedings, the owner claimed damages for noise due to construction of a freeway, for which part of his land was taken.
- I. The owner can recover that noise was an element of damage.

- II. The damage due to the item of noise must be valued separately from the land.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 294. A property was listed with a broker for sale by the owner at \$30,000, commission to be 7 per cent. During the exclusive period, the property was condemned by the state which paid the owner \$30,000 for the property. Under these circumstances:
 - I. the broker is entitled to a commission from the state.
 - II. the broker is entitled to the commission from the owner.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 295. Where legal title is transferred in the sale of real estate, encumbered by a deed of trust, it is always necessary:
 - I. to obtain the consent of the beneficiary.
 - II. for the grantor to deliver a deed.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 296. Tom Burton devised his residence to his wife, Elizabeth, and upon her death, the property was to go to their son, Edward. Elizabeth died one day after her husband. Under these circumstances, Edward received:
 - I. an estate in expectancy.
 - II. a remainder estate.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 297. Ray Upton and Opal Upton, his wife, conveyed their property to Opal Upton and a daughter, Nancy Upton. The deed recited that the deed was expressly made with the right of survivorship between the grantees. The deed created
 - (a) a tenancy in common.
 - (b) a void estate.
 - (c) a joint tenancy.
 - (d) a life estate for Opal, the mother.
- 298. A promoter of a subdivision dedicated a street in the plan for public use, with the reservation that if the street were ever abandoned, it would revert to the promoter (a corporation), its successors and assigns. The street was subsequently abandoned. The street now reverts to
 - (a) the municipality.
 - (b) the state.
 - (c) each abutting property owner owns to the middle of the street.
 - (d) the original promoter.
- 299. An easement in gross is created in favor of George Sampson by his neighbor, Adam Otis, for use of a driveway separating their two properties. Five years later, Sampson sells his property to M. Fairchild:
 - (a) the easement in question is continued for benefit of Fairchild.
 - (b) Sampson may use the driveway any time he visits Fairchild.
 - (c) the easement is terminated.
 - (d) an easement by necessity is now created.
- 300. George used a roadway over land of Sloan for ingress and egress to his land, for over 30 years, with permission of the latter. Sloan sold his property to McKee, who erected a

- barricade, preventing George's use. In a suit by George to enjoin interference with his use,
- (a) he will win.
 - (b) he will not win.
 - (c) the court will assess damages for the continued use.
 - (d) the court will remand the case to an arbitration panel.
301. John Harris and Mary Harris own a property by the entireties. Due to domestic difficulties, John moves out. Two years later, he brings suit for partition, to have the property sold and the proceeds divided between them.
- (a) John will win the suit.
 - (b) John will not win the suit.
 - (c) The court will require Mary to pay John one-half the rental value.
 - (d) The court will decree that John and Mary now own the property as tenants in common.
302. Title to property is taken in the names of Thomas Gilson and Elsie Gilson, his wife. They have never been married, and Elsie is married to Nick Cullen, whereabouts unknown. Thomas died. The property will go to:
- (a) Elsie.
 - (b) the heirs of Thomas.
 - (c) one-half of the proceeds of a sale to Elsie and the other half to heirs of Thomas.
 - (d) the property will escheat to the state.
303. Mrs. White, a widow, entered into an agreement with her neighbor, Stone, whereby she could use his driveway, which abutted her land, and she would remove four inches of stone steps on the side of her dwelling, which would benefit Stone's driveway in winter use of the driveway. The easement read "an easement for the benefit of Kay White." She has
- (a) an appurtenant easement.
 - (b) a license.
 - (c) an easement in gross.
 - (d) a revocable easement.
304. George Crow, owner of a tract of land, occupied 10 feet over on Delbert's land upon the erroneous belief as to the true boundary. During this adverse occupation, Delbert notified Crow that he was a trespasser. The period for adverse possession passed and Delbert now sues Crow.
- (a) Crow now owns the subject 10 feet.
 - (b) Delbert continues to own the land since he gave effective notice to Crow.
 - (c) Crow must pay Delbert the reasonable value of the 10 feet.
 - (d) Crow can occupy only one-half of the 10 feet, or 5 feet.
305. Plaintiffs and their predecessors in title used defendant's adjoining farm land for 30 years as ingress and egress to their farm. Defendants claimed that such use was permissive in the beginning and the land so used was unproductive waste land:
- (a) the use will be enjoined.
 - (b) the plaintiff now owns the land.
 - (c) the plaintiff now has an easement by prescription.
 - (d) the plaintiff must pay the reasonable value for a continued use.
306. Davis claimed title to several vacant lots. Davis and George derived title from a common grantor. The Davis deed was recorded first. Davis and his predecessors never paid taxes or other assessments for 40 years. George had paid taxes on these lots and other assessments and for removal of weeds levied by the city. Who has title to the lots?
- (a) George has title to the lots by adverse possession.
 - (b) George has title by laches on part of the plaintiff.
 - (c) George because of the "clean hands" doctrine.
 - (d) Davis has title to the lots.
307. The disability of the principal, requiring a wheelchair,
- (a) will terminate the agency.

- (b) will not terminate the agency.
 - (c) will require a new power of attorney from the principal.
 - (d) will be voidable at principal's election.
308. The L P S partnership is deeding a tract of land to Sam Simon. The partnership is composed of 3 brothers, one of whom is not active in real estate transactions.
- (a) The acknowledgment to the deed can be taken by S.
 - (b) The acknowledgment can be taken by L or P.
 - (c) The acknowledgment can be taken only by all three members.
 - (d) The acknowledgment to the deed cannot be taken by any of the three members.
309. A developer subdivided land and orally represented to each purchaser of a lot that only one family residences could be erected, and prohibiting mobile or trailer homes. Only eight lots were sold in the subdivision of 40 units. After six years, the developer sold two lots to persons who were permitted to use the lots for trailer homes. The deeds to the purchasers contained a clause that all representations, covenants and agreements were expressed therein. The original owners have a cause of action
- (a) against the trailer owners.
 - (b) criminal action against the land developer.
 - (c) injunctive relief against developer.
 - (d) civil suit for damages against developer.
310. A buyer agreed to purchase a vacant lot on November 30, 1977 for \$3,500, payable at the rate of \$50 per month. Payments were made irregularly until \$1,650 was paid. On July 22, 1978, the buyer informed the seller that he was ready to pay the balance. A deed was executed by the seller August 2, 1978, but it was never tendered to the buyer. The buyer now sues to recover the \$1,650 paid by him.
- (a) Buyer can recover.
 - (b) Seller can recover balance due.
 - (c) Seller must tender a deed.
 - (d) Action of buyer is premature.
311. In 1975, Adam Steele and Mary Steele, his wife, acquired title by the entireties to their home. Mary obtained a divorce from Adam in 1976. On June 15, 1978 Mary and Adam re-married. Under these circumstances,
- I. Adam and Mary again own the residence by the entireties.
 - II. Adam and Mary are owners of the property as tenants in common.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
312. Which of the following is true?
- I. A deed always grants the exact extent of ownership.
 - II. A survey is necessary to ascertain exact extent of ownership.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
313. If the written title to real estate is granted by a prior owner to one who has been in possession of a tract of vacant land for 25 years, but who cannot establish legal title without proceeding under adverse possession, then possession may be claimed under
- (a) tacking.
 - (b) color of title.
 - (c) doctrine of relation.
 - (d) none of the above.
314. Stone operated a junk yard under a license, pursuant to an ordinance. Later, he sold the business and the land to Williams, who was informed by a city official that he would have to obtain a new license. Williams was refused a license. He sues. Under these circumstances:

- I. a new license should be issued.
 - II. Stone's license should be transferred for the balance of the year.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
315. Snyder, buyer of an apartment building, sued the seller, Sterner, and the latter's grantors for breach of warranty in a statutory warranty deed, claiming that hidden and unknown building and fire code violations in the subject building were "encumbrances" within the legal meaning of the term. In this case
- I. the buyer will win his suit.
 - II. the seller only will be liable for the loss.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
316. An action to compel a seller to transfer title to real estate is known as
- I. an equity action.
 - II. action for specific performance.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
317. A future interest in real property, which is left to the grantor, is known as a
- I. remainder.
 - II. reversion.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
318. Which one of the following statements concerning an appurtenance is correct?
- (a) A front porch of a dwelling.
 - (b) Any fixture.
 - (c) It passes with the land.
 - (d) None of the above.
319. Which of the following would invalidate a deed?
- (a) Failure to record within one year.
 - (b) A fictitious grantee.
 - (c) A misspelled name in the premises.
 - (d) Any mistake in the legal description.
320. An owner of land had a spring on it. He built several retaining walls to create some ponds. The adjoining property owner claims he had riparian rights to the overflow. Under these circumstances:
- I. the overflow would be considered surface rights and the neighbor has no right to the water.
 - II. the owner would be required to remove the retaining wall.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
321. In a condemnation proceedings, which one of the following does not apply?
- (a) Board of Viewers.
 - (b) An appraiser.
 - (c) A license.
 - (d) A condemnor.

322. Ownership in a condominium is evidenced by
- (a) a co-partnership deed.
 - (b) a trust deed.
 - (c) a lease in perpetuity.
 - (d) a fee simple deed.
323. The notice afforded by a recorded agreement of sale to real estate is
- (a) actual.
 - (b) constructive.
 - (c) implied.
 - (d) factual.
324. In numbering a township, section 6 is always the
- (a) southeast corner.
 - (b) northeast corner.
 - (c) northwest corner.
 - (d) southwest corner.
325. An area of land within a municipality, set off by ordinance for a particular use, is termed
- (a) a zone.
 - (b) an allocation.
 - (c) a cul de sac.
 - (d) a dedication.
326. Property that is incidental to other property to which it is annexed, is known as
- (a) an easement.
 - (b) an appurtenance.
 - (c) a fee-tail estate.
 - (d) a freehold estate.
327. Real property is said to consist of lands, tenements and
- (a) easements.
 - (b) hereditaments.
 - (c) power of eminent domain.
 - (d) any base fee.
328. Which one of the following is not related to a homestead estate?
- (a) Head of the household.
 - (b) Minor children in a divorce.
 - (c) Member of a military reserve unit.
 - (d) Abandonment of the use, as occupant.
329. Which one of the following methods of creating an easement would not apply:
- (a) by Court Decree.
 - (b) by necessity.
 - (c) by deed.
 - (d) by implication.
 - (e) by prescription.

THE FINANCING OF REAL ESTATE

THE TERM “money market” is sometimes used in referring to those institutions whose function it is to make available money and credit to borrowers. The whole business structure of the United States is based upon the assumption that credit will be available to those who need it and can show the ability and willingness to repay.

The money market

At any one time various segments of our economy are competing for the investor's dollar. The investors on the other hand are competing with each other to obtain the best investments at the most favorable rates.

The investor gives up the privilege of spending his money when he lends it to another. In return for giving up the money and privilege of spending it, he exacts a promise from the borrower to repay it at a future time. He also requires that the borrower pay a certain amount for the use of the money. This is called interest. It is really rent for the use of the money.

The rate of interest which investors ask and get is determined by many complex economic factors. One of the most important of these factors is the availability of lendable funds, and the current demand for and supply of “mortgage money.” Another is the risk involved in making the loan. A third is the business outlook for the future. These are only a few of the economic forces which determine the rate of interest in general and in a specific locality.

The supply of money through our banking system is controlled to a great extent by the Federal Reserve System and the local banks. The funds available for investment in real estate, however, are made up principally from the savings of firms and individuals.

Banks, for instance, cannot use funds deposited by their customers in their checking accounts to make long-term loans on real estate. Only funds deposited in savings accounts are available for such use. Savings and loan institutions and insurance companies also lend funds which are really the savings of individuals. Since these institutions are lending the money of others, the Federal and state government have required of them a high degree of responsibility for the funds placed in their care.

What investments compete for these savings?

One of the basic principles of investment is that a person should never put all of his savings in one type of investment. By diversifying his investments, he is able to minimize the overall risk of loss. At any time an investor can put his money into government bonds, corporate bonds, savings accounts, mortgages, land contracts, real estate, savings and loan institutions, or into the preferred or common stocks of several hundred corporations. The investor, therefore, has before him at all times a

wide range of investment media from which to pick and choose according to his likes and dislikes.

Mortgages

Almost since the beginning of written history we have records of a debtor pledging some property as security for a loan. If the debt were not paid, the property pledged was taken over or sold to satisfy the debt.

In real estate financing the borrower gives a note in which he unconditionally promises to pay a certain amount of money. This is the debt instrument that sets up the obligation of the debt. The borrower also gives to the creditor a mortgage which pledges certain property as security for the loan. It is sometimes called a "dead pledge" because as long as the debtor carries out his promises and obligations the mortgage has no effect. However, if the borrower defaults on any of his promises, the pledge "comes to life" and gives the creditor the right to have the property seized and sold to satisfy the debt. The mortgage, however, does not prevent the sale of the real estate.

People often say they are "paying on a mortgage" but this is misleading because actually they are paying on the note.

Banks as money lenders

Commercial banks have been a traditional source of funds for the financing of real estate. National Banks are restricted by law as to the amount which they may lend on real estate and as to the time limit of such loans. If the installment payments are sufficient to amortize the entire principal of the loan within the period ending on the date of its maturity, nationally chartered banks may lend up to 90% of the appraised value of the real estate at the time the loan is made. The maximum term for a National Bank mortgage loan is 30 years for a conventional loan. F.H.A. or G.I. loan regulations are those set forth by the government agencies having jurisdiction. The total loans that the bank may hold on real estate may not exceed, at the time of making the loan, the unimpaired capital plus the unimpaired surplus of the bank, or 100% of its time and savings deposits, whichever is greater. The large increase in time and savings deposits have made banks much more active in the field of real estate financing.

Savings and loan associations

The savings and loan associations originated as a cooperative attempt to help members of the organization finance their own homes. Members could subscribe to shares in the organization and make payments on these shares. When they had paid in a sufficient amount, they were allowed to borrow from the association. Dividends were paid on the funds invested in the organization. However, these dividends depended upon profits and were subject to wide fluctuations.

Over the years, savings and loan associations have changed in character, so that today they are thrift organizations catering to the small and medium sized investor. Although they specialize in loans on single family residences there has been a trend to invest a portion of the assets in loans on multi-unit dwellings to serve the housing needs of the country. Federal Savings and Loan Associations are permitted, within certain limitations, to make loans secured by multi-unit dwellings and other investment type properties in addition to home mortgage loans; that is, one-to-four-family dwelling units.

Individual savings and loan associations have, in recent years, also engaged in participating as groups in larger loans which are beyond their individual capacities.

This lending method has provided them greater yield and diversification of investment which are major considerations for all investors.

Savings and loan associations were pioneers in the use of amortizing loans on homes. Years before other lending institutions used this type of loan, savings and loan associations were advertising the advantages of such loans to both the borrower and lender.

Savings and loan associations have grown to be the largest single factor in mortgage financing. At the end of 1976 preliminary figures of the Federal Home Loan Bank Board and the Federal Reserve Board show they accounted for over 44% of total mortgage loans outstanding. Their total investment was in excess of \$290 billion. Of this \$290 billion, \$262 billion was invested in mortgage loans secured by one-to-four-family residences.

Life insurance companies

Life insurance companies are one of the largest sources of funds for real estate loans. Because of our increased population, longer life expectancy, group insurance as a fringe benefit in labor contracts, the life insurance companies have found themselves in possession of increasing amounts of funds and for longer periods of time.

The increase in assets of life insurance companies in this country has been nothing short of phenomenal. In 1920, total assets were less than \$8 billion; in 1961, the assets were in excess of \$141 billion. In recent years their assets have been increasing dramatically to the present level at the end of 1975 of over \$289 billion, according to the Institute of Life Insurance.

An examination of the assets of these companies reveals that real estate mortgages make up their second largest investment. At the end of 1975 (according to the Institute of Life Insurance), their mortgage portfolios in total amounted to over \$89 billion or approximately 31% of their total assets. The other larger investment was in corporate securities which accounted for 46.3% of life insurance companies' assets.

Almost all of the loans made by these companies with real estate as security are of the amortizing type. This means that the borrower starts to pay back the loan at the end of the first month. To be distinguished from the "amortizing" loan are mortgage loans on which interest only is paid or the loan type wherein the payment is "ballooned" after a period of time.

The loan which does not amortize, that is, on which interest only is paid, is called a "standing" loan. This type of loan is generally very short (up to 5 years), because consideration must be given to the depreciation in value of the real estate due to normal wear and tear.

"Balloon" in mortgage lending refers to the loan contract which requires amortization over a longer period than the loan term. A loan term is set at the end of a relatively short period, but payments against principal are made as if the loan were to be repaid over a longer period. For example, a loan may have a maturity of 15 years with an amortization period of 30 years.

There are advantages to both borrower and lender; the borrower has a lesser "constant" payment than might otherwise be required and the lender has an opportunity for renegotiation of the loan at a later date.

Some major insurance companies have taken an equity, that is ownership, position in certain income-producing properties in order to acquire a hedge against inflation. These companies will then benefit from increases in the value of the real estate or the increases in rental income. Another method of providing for increases

in income, in addition to the interest on the loan, is the charging of a percentage of the rents over a specified minimum amount as additional interest. That is, a figure is set as the projected gross or net rental income and a charge is made in addition to the interest, which charge is a percentage of the income achieved over that which has been projected. Both these methods result in a potentially greater overall yield on the loan to the lender.

Mutual savings banks

Most mutual savings banks are in the eastern part of the United States. They were set up in many cases to promote thrift by encouraging people to invest. Originally they invested in mortgages in their own immediate geographic area. With the advent of F.H.A. and V.A. loans they started to invest nation-wide.

Mutual savings banks, like most financial institutions, are restricted as to the types of investments permitted to them. Of the permitted investments mutual savings banks (according to the Federal Reserve Board) invest the preponderance of their assets in mortgage loans. The statistics published by the Federal Deposit Insurance Corporation for the period ending December, 1975 show that their investments in mortgage loans are in excess of \$77 billion out of total assets for all mutual savings banks of \$121 billion. The major share of mutual savings bank mortgage investment (over \$59 billion) was in residential lending.

Mutual savings banks as a form of financial institution direct the major share of their efforts to real estate mortgage lending, and as can be seen from the statistics quoted above, they are very important to the support of such activities in the United States.

Pension funds

Pension funds in the "private non-insured" category are showing a decreasing interest in mortgage loans as investments. The Statistical Bulletin of the United States Securities and Exchange Commission for the last quarter of 1976 reports that the book value of investments in mortgage loans was \$2.369 billion compared to \$2.383 billion one year earlier, or a decline of \$14 million. Investments in common stock have increased during these periods while mortgage investments have declined. Over the period from 1962 to 1972, private non-insured pension funds had shown an increasing interest in mortgage investments until 1971 when the interest lessened.

Private lenders

Many individuals with funds to invest are willing to lend and take back mortgages as security. This preference for mortgage loans is at least to some extent brought about by their desire to see the property which is pledged as security.

Individuals will often loan on real estate on which institutional lenders will not or cannot legally lend. Thus private money sometimes fills a need for loans which would not otherwise be made. Many such loans entail more than average risk and therefore carry a higher interest rate than those made by institutional lenders. Individuals may also be willing to make short-term loans which ordinary lenders would not consider because of the cost of placing the loan.

Loans made by individuals, however, comprise only a small segment of all loans. But they help to round out the loan market and fill in gaps left by the organized lenders. Vital as this is, they do not actively compete with the institutional lenders.

Responsibility of institutional lenders

Institutional lenders are actually lending other people's savings. Because of this, laws controlling such institutions require of them a high degree of responsibility and business judgment. They also have certain responsibilities to the borrower and to the public.

In their fiduciary capacity they must see that the loans they make are economically sound and that there is adequate security in the property covered by the mortgage. From the standpoint of the borrower they must see that he is obtaining property which fills his needs and that the schedule of payments is such that he will be able to make them without undue hardship. If there is a default the borrower may lose all of the equity he has built up in the property. In medium and low income classes the home usually constitutes the only savings a family has other than Social Security. Therefore, a lending institution has a double responsibility to see that the loans which are made are economically sound for both the lender and the borrower.

G.I. loans¹

Mortgage loans which are guaranteed or insured under Title 38, United States Code (formerly the Servicemen's Readjustment Act of 1944, as amended), are usually called G. I. loans. Under this law the Veterans Administration may guarantee or insure home loans to World War II veterans, veterans of the Korean conflict, eligible post-Korean veterans and certain other servicemen. The loans are made by lending institutions and the loan guarantees, which are provided by the Veterans Administration, are for the benefit of those lenders. The lenders are benefitted in the event the veteran-borrower defaults in repayment of the loan. In addition to the guarantee or insurance of loans for veterans, the Veterans Administration has a program for the making of direct loans where mortgage lenders do not function effectively.

Under present laws, each eligible veteran has an aggregate entitlement of \$17,500; that is, the Veterans Administration may guarantee or insure loans against default up to this amount. The most common type of loan assistance provided by the Veterans Administration is through the "guarantee" program for mortgage loans.

The "guarantee" program permits the Veterans Administration to assure the lender that up to 60%, but not more than \$17,500, of a mortgage loan will be paid to a lender if the loan to the veteran is defaulted. For example, a lending institution which lends \$10,000 to a veteran under the "guarantee" program receives a guarantee of \$6,000, that is, 60% of the loan. A further example is the case of a lending institution which provides a loan in the amount of \$30,000 and obtains a guarantee of 58.3% of the \$30,000 loan (\$17,500 is the limit and is 58.3% of \$30,000).

The guarantee or insurance of loans by the Veterans Administration is for the purpose of assisting an eligible veteran in purchasing a residence which he or she will occupy. Under present regulations, a veteran may regain eligibility for this program even though he or she secured a V.A. guaranteed or insured loan in the past, if the old loan was repaid. The eligibility requirements have been liberalized since the inception of the program so that prior use does not exclude a veteran's future eligibility for a V.A. loan.

The veteran must keep in mind that although he or she obtains assistance in purchasing a home, the loan must be repaid in accordance with the contract. The Vet-

¹ G.I. loan is the same as a V.A. loan—one guaranteed by the Veteran's Administration.

erans Administration assists the veteran through guarantee or insurance, but does not otherwise intervene in the fundamentals of the loan contract. If a veteran defaults in repayment of the loan and the Veterans Administration loses money in the transaction, the veteran is held liable for the loss; therefore, the government provides assistance, but does not make a gift to an eligible veteran.

Loans guaranteed or insured by the Veterans Administration had a rate ceiling until 1968 when the establishment of the maximum rate was placed under the control of the Secretary of Housing and Urban Development in consultation with the Administrator of Veterans Affairs. This action permitted a response to the conditions prevailing in the money market and was an effort to provide a continuing source of funds for loans to veterans. From time to time, as interest rates increased generally, the G. I. loan availability was lessened or eliminated for a time because the maximum rate fixed for G. I. loans was less than the market for other competing investments. In mid-1977, the maximum rate fixed for loans guaranteed by the Veterans Administration was $8\frac{1}{2}\%$, that is, no mortgage loan to a veteran under the provisions of Title 38 of the United States Code could provide for an interest rate in excess of $8\frac{1}{2}\%$.

In addition to fixing the maximum interest rate, the Veterans Administration also provides protection to the veteran against paying in excess of the market value of the home to be purchased. The Veterans Administration provides this protection to the veteran by requiring that all properties be appraised by qualified real estate appraisers. In the event the purchase price exceeds the appraisal, that is, the Certificate of Reasonable Value, the veteran who wishes to complete the purchase contract must:

1. Restrict the loan amount to not more than the reasonable value as determined by the Veterans Administration.
2. Pay in cash from his own sources the difference between the purchase price and the reasonable value plus proper closing costs.
3. Sign a certificate acknowledging that he understands the purchase price is higher than the determined value and that he will pay the excess in cash from his own resources.

Certain geographical areas of the United States have been designated as housing credit shortage areas. In these parts of the country, the Veterans Administration provides direct loans to veterans. The direct loan program is not available where there is a supply of funds for V.A. guaranteed or insured mortgage loans.

In addition to the requirement that the geographical area be designated as one experiencing housing credit shortage, the Veterans Administration places other requirements for qualifications under the direct loan program:

1. The loan must be for the purpose of buying, building or improving a home to be occupied by the veteran.
2. The loan may be for the purpose of building a residence on a farm, but again the veteran must occupy the residence. The act provides assistance to a veteran so that he or she may obtain housing, but not assistance to enter the business of farming.
3. The loan may be for the purpose of refinancing an existing loan secured by the veteran's residence.
4. If the veteran has full entitlement, the loan is permitted to be a maximum of \$25,000.

If a veteran desires to sell his property after purchase, he may do so without repaying the loan. In the event of sale without repayment, the veteran has the following choices:

1. He or she may sell the property "subject to" the mortgage loan; that is, the veteran remains liable for the debt, but transfers title to the real estate and receives payment for the difference between the sale price and the outstanding balance of the mortgage loan.
2. The purchaser may assume the veteran's liability for repayment of the loan and the veteran will no longer be held responsible for the repayment of the debt by either the lender or the Veterans Administration. In this instance the purchaser's credit must be approved by the Veterans Administration and the lender in order to accomplish the desired release from liability.
3. The purchaser may assume the veteran's liability without release by the Veterans Administration or the lender; that is, a contract for assumption of the obligation exists between the veteran and the purchaser, but there is no approval or concurrence by the lender or the Veterans Administration.
4. The veteran may also be released from liability by the Veterans Administration, but the liability to the lender is retained.

The veteran who desires to sell his property subject to the Veterans Administration guaranteed or insured loan is always well advised to consult his lender, the Veterans Administration and legal counsel. Such a sale can have far-reaching future effects on the veteran's assets and his credit standing.

The Veterans Administration programs for the purpose of providing assistance to eligible veterans have been very effective since their beginning in 1944 with millions of veterans being served and lenders protected in making high ratio mortgage loans.

The Home Owners' Loan Corporation

In 1933, the Home Owners' Loan Corporation was authorized to assist home owners who were in default. This occurred during the Great Depression when the typical home owner was two years delinquent on mortgage payments and three years delinquent on real estate taxes. Foreclosures of residential real estate were being filed at the rate of almost 1000 each day.

The Home Owners' Loan Corporation was set up to "bail out" both the home owners and the lending institutions which had made the loans. The H.O.L.C. made loans rather than provide loan insurance.

The Federal Housing Administration loans

In 1934, the Federal Housing Administration was formed with the idea of insuring the loans of lenders so that they would be more willing to lend to home owners. There are several parts or titles to the original act but the section of most interest to real estate people is Title II which makes provisions for insuring loans on one- to four-family dwellings, and Title I loans which are for improvement and repairs. The F.H.A.² sets up the requirements which the borrower and the property must meet before the loan will be insured.

In general the standards of F.H.A. are rather high. They have devised a pattern of rating risks that attempts to evaluate all the factors that affect the property in-

² F.H.A.—Federal Housing Administration; federal government agency that insures real estate loans.

cluding the qualifications and credit of the buyer. They have also been leaders in the attempt to standardize appraising procedures.

A lending institution, in order to qualify for making insured loans, must be a corporation with total assets in excess of \$100,000. It must also file an application and be accepted by the F.H.A. as a qualified lender. The fact that a lending institution has qualified for making insured loans does not mean that all the loans it makes are insured. It can make insured loans or conventional loans as it sees fit. The advantage to the lender of making insured loans is that the risk involved decreases; but because the interest rate decreases with the lesser risk, the lender will receive a lower yield.

The interest rate applicable to F.H.A. insured mortgage loans is fixed by the Secretary of Housing and Urban Development (HUD) under authorization by the Congress. The maximum rate permitted by the Secretary on March 1, 1978, was $8\frac{3}{4}\%$. In addition to this interest rate the borrower is required to pay an insurance premium of $1\frac{1}{2}\%$ to the mortgage lender. The lender periodically remits this insurance premium to the Federal Housing Administration. The borrower is also required to make monthly deposits for payment of real estate taxes and hazard insurance in order to be certain that these obligations are paid when due.

For the purpose of providing the benefits of home ownership and improved housing to low income families, Sections 235 and 236 of the Housing Act were enacted by Congress. These two sections of the Act were suspended due to abuses which occurred in their use and the need to restudy the programs.

At this writing, the Federal Housing Administration, which made a major contribution to home ownership for forty years, has declined in importance. This decline came about because of the aforementioned abuses in certain areas, but also because of the rising importance of private mortgage insurance companies. These private mortgage insurance companies, as will be discussed later in this chapter, are taking the place of importance maintained for so long by the Federal Housing Administration. No attempt is made to forecast the future of the F.H.A., except to say that it appears that changes in its operations will occur.

Qualifying for an F.H.A. loan

A home buyer may choose any approved lending institution in applying for a loan, and file his application on the approved F.H.A. forms. On these forms he gives a description of the property. He also outlines his financial status and gives a short personal history and an employment record unless he is self-employed.

The lending institution will then examine the application to see whether to submit it to the F.H.A. for approval. The lending institution, having made many such loans, can judge quite accurately the chances the potential borrower has of having his loan approved. If the lender feels that the loan will be approved, the application is forwarded to the regional F.H.A. office. The F.H.A. will then examine the application, appraise the property, and apply the mortgage pattern for the area. If the application meets the requirements for insurance, a Commitment for Insurance is issued. When this is received by the lending institution, the loan is made.

Some lending firms do not originate F.H.A. loans but prefer to purchase mortgages which have been made by other institutions. This buying of mortgages by a firm which did not originate them is known as the secondary mortgage market. If there is an active demand for loans, the originating firm can liquidate some of its loans and in this way have available funds for further lending. Without the secondary mortgage market, lending firms would have to wait to make further loans until

collections or additional investments were made when they had loaned out the total of available funds.

In many cases, the originating firm in selling its mortgages to another firm continues to collect the payments on the mortgage and is paid a small fee for this service. This is an advantage to both because the originating firm has the history of the borrower and often knows local conditions better than the secondary firm. It relieves the buying firm of the detail work of collection. The secondary firm can also buy large blocks of mortgages without the cost of originating the loans.

During the years it has been in operation, F.H.A. loans have enjoyed a very favorable foreclosure rate. The losses to the insuring corporation, i.e., F.H.A., have been well within reasonable limits, indicating the soundness of its underwriting practices.

It is generally felt that the F.H.A. has stabilized the lending market. By its standardization of procedure and consideration of the credit of the buyer as well as the security offered by the property, it has strengthened the whole mortgage market. The higher loan ratio under this program has reduced junior financing a great deal. The overall effect has also been to reduce interest rates and to make the amortizing mortgage a standard lending instrument.

Conventional loans

A conventional loan is one that is neither guaranteed nor insured. Several years ago such loans would have been non-amortizing and would have had maturities from three to five years. Today, due to the changes brought about by F.H.A. and V.A. practices, the typical conventional loan is also an amortizing loan. For the most part, conventional loans carry a slightly higher interest rate and the maturities are shorter than the F.H.A. and G.I. loans.

Conventional loans are made by lending institutions and by individuals as well. The interest rates charged are determined by local market conditions and by the risk involved. As indicated earlier in this chapter, individuals often make real estate loans on property which lending institutions cannot or will not make. In some cases the loan is really a form of credit loan because the property pledged does not have a ready market. Such loans often carry a relatively high interest rate due to the extra risk involved. On the other hand, loans made on new construction may be competitive with insured and guaranteed loans.

Private mortgage insurance corporations

The laws under which lending institutions are chartered and insurance companies are regulated permit the insurance of a portion of a mortgage loan as a means of limiting the lender's risk. The most common programs relate to insurance of 20% or 25% of the loan, which with a required 10% or 5% downpayment and adequate appraisal reduces the lender's potential loss. The loss is reduced by the agreement on the part of the mortgage insurance company to pay, after default, a portion of the loan balance or acquire the property from the lender at the outstanding balance plus unpaid interest and legal costs.

First in this private field was Mortgage Guaranty Insurance Corporation, known as MGIC. Others have since entered the field.

An additional feature which has developed in the area of insurance of conventional loans has been the insurance of payments by tenants under leases. This type of insurance has permitted more lenders to enter the field of financing, other than single family residences. The insurance of the leases has provided not only a limitation on risk, but also a more expert underwriting approach. Smaller associations

with limitations on staff now can use the underwriting expertise of the private mortgage insurance corporations. The staffs of these insurance companies, because of the benefits of specialization, are able to determine with greater exactness the possibilities for success or failure of a large project. Therefore, the smaller associations and larger ones too, benefit through insurance of a part of the loan plus the review of the proposed investment by qualified experts in the field of mortgage financing.

Other financial instruments

The Land Sales Contract. The land sales contract is also used as a junior financing instrument. For example, a man has an existing mortgage on a house that he wishes to sell. The lending institution will not allow a second mortgage to be placed on the property and the prospective buyer cannot buy out the equity of the owner with his down payment. To illustrate, the sales price is \$15,000 and the existing mortgage is \$9,000, leaving \$6,000 to finance. The prospective buyer has only \$2,000 to pay down. Under the circumstances, the seller may be willing to take back a land sales contract for the remaining \$4,000. This does not constitute a second mortgage on the property. The buyer then pays on the mortgage to the lending institution and to the seller on the land sales contract. In this way, the sale can be made without violation of the first mortgage.

The Purchase Money Mortgage. Another way in which a seller may finance the sale of property is by means of a purchase money mortgage. The seller agrees to sell to a buyer for a stated price. The purchaser agrees to pay a certain amount down on the purchase price. The seller then agrees to take back a purchase money mortgage for the remainder of the sale price.

Pledges

In recent years the plan of using pledges with savings and loan associations to increase the loan amount over and above the amount of a permitted real estate mortgage has been used. Under this plan the lending institution combines two lending privileges.

First: The amount of mortgage it can lend based on its statutory regulation of ratio of loan to value.

Second: A loan on a savings account. The pledge is against this savings account.

In a typical case the seller will open a savings account. This account will be pledged against a loan to the buyer which is over and above the mortgage. The seller does receive dividends on his savings account. He cannot withdraw the full amount until the original mortgage is reduced to a certain amount.

There are many plans for pledged accounts. Two basic plans are:

1. Mortgage \$8,000, pledged account \$1,000, total borrowing \$9,000. The total amount is paid off at a level monthly payment rate. Under this plan, \$100 will be released from the pledged account for each \$200 paid off on the mortgage.

2. A plan for accelerated pay-off of the pledged account. In the case of an \$8,000 mortgage and \$1,000 pledge the mortgage will be amortized by a level monthly payment over a period of 20 or 25 years. The \$1,000 will be paid off in three years or five years. The pledged account may be withdrawn after the three- or five-year period and the monthly payments of the borrower would be reduced accordingly.

Most lending institutions agree to notify the pledgee if there is a default on the mortgage so he can step in to protect his interest.

Discounts

V.A. and F.H.A. mortgage loan interest is determined by government regulation. In a case where interest is fixed, the yield is often not attractive enough to secure a ready market for funds. A good example of this is government bonds with interest rates below those that can be obtained from an insured savings account in either a bank or savings and loan association. These bonds do not have a ready market because of the fixed yields unless they are sold at a discount.

A rule of thumb used to determine yield on mortgages with an estimated life of 12 years is this: a four point or four per cent discount increases the yield of the mortgage loan approximately $\frac{1}{2}$ of 1 per cent. Although most mortgage loans are for a longer term than 12 years, the average life of a loan is approximately 12 years. To determine yield you may refer to a Prepayment Mortgage Yield Table. Based on a term of 25 years and an interest rate of 7% you will achieve the following yields by charging a discount at the inception of the loan:

25 Year Loan Prepaid In

Price	8 yrs.	10 yrs.	12 yrs.	To Maturity
95 (5% discount)	8.03	7.91	7.84	7.71
96 (4% discount)	7.84	7.75	7.69	7.59
97 (3% discount)	7.66	7.59	7.55	7.47
98 (2% discount)	7.48	7.43	7.40	7.35

Very complete tables are published with regard to mortgage yields and are a very necessary tool in the business of real estate financing. Yields are so carefully scrutinized that they are computed within one-one hundredth of one per cent. Each one-hundredth of one per cent is referred to as a "basis point" so that an increase or decrease of one per cent in yield may be referred to as a change in yield of "one hundred basis points."

Constant payment tables

In order to simplify the calculation of payments in the field of mortgage financing, a method of computation has been developed to express the payment in terms of percentage of the total loan. Given the rate of interest and the term of the loan, a person may refer to such a table and quickly acquire the percentage of the loan needed to repay the loan on a fully amortized basis. For example, the constant annual per cent needed to repay a 25 year loan at 7% is 8.49%. Therefore, on a loan of \$100,000 the annual payment is \$8,490 per year. To compute the monthly payment simply divide by 12. The following is the problem in simple form:

$$\underline{\$100,000} \times .0849 = \$8,490 \div 12 = \$707.50 \text{ per month}$$

GNMA securities

On February 19, 1970 a major new contribution to the field of mortgage financing occurred with the issue of the first Government guaranteed mortgage-backed security. This is a method by which mortgage lenders may accumulate pools of F.H.A. insured or V.A. guaranteed loans and for an initial fee of \$500.00 plus an annual fee of either .04% or .06% paid to the Government National Mortgage Association may obtain the guaranty of the Government National Mortgage Association. This guarantee is backed by the full faith and credit of the United States Government.

These securities have revolutionized the approach of lenders to mortgage financing and it is expected that the program will help to level out the supply of mortgage funds. These funds have characteristically been extremely vulnerable to increases in interest rates.

This program, referred to as "Ginnie Mae" mortgage backed securities, permits the sale of fractional interests in blocks of mortgages to investors. The investors have yields which compare very favorably to high grade corporate issues and receive interest and principal payments each month. The securities are practically risk free, since they are backed by the full faith and credit of the United States Government. The issuer (mortgage company, bank, savings and loan association, or other mortgage lender) reaps large benefits through servicing fees, escrow deposits and other collateral benefits. Hopefully, the prospective buyers of houses have a constant supply of mortgage funds and the construction industry does not suffer injury to it by money market fluctuations. Obviously, these are important considerations as our country looks forward to a continuing need for additional housing in the future.

Truth in lending

On May 29, 1968, President Lyndon Johnson signed into law the Truth in Lending Act, Title I of the Consumer Credit Protection Act. This law required that effective July 1, 1969, those people engaged in lending must disclose certain information to their borrowers. The purpose of the Act was to permit prospective borrowers to make adequate comparisons of the charges of the various lenders. It does not in any way limit charges for credit, but simply provides for disclosure of the charges related to the loan.

The purpose of the Act is to insure a meaningful disclosure of credit terms so that a consumer will be able to compare more easily the various credit terms offered to him and make a selection from among the various lenders, which he has compared. The Act specifically requires that the "annual percentage rate" as disclosed to the potential borrower be based upon uniform factors among various lenders. However, the Act is only a disclosure statute, and it does not set maximum rates of interest or place ceilings upon other charges.

Truth in Lending and Regulation Z apply to anyone "who in the ordinary course of business arranges or offers to arrange" for consumer credit of any form to individuals. Thus, this would cover savings and loan associations, banks, and many other types of real estate lenders. All real estate mortgages and other extensions of credit to purchase or transfer real estate are covered where the purpose of the transaction is for personal, family, household or agricultural reasons regardless of the amount of the mortgage or debt; if it is not a real estate mortgage, it is not covered by Truth in Lending or Regulation Z if it is above \$25,000.00. In addition, business and commercial loans are not covered by Truth in Lending or Regulation Z.

The disclosure required of a lender if a loan is covered by Truth in Lending and Regulation Z is that the lender furnish a statement to the borrower disclosing both the finance charge and the annual percentage rate prior to entering a permanent contractual relationship with the creditor. The finance charge to be disclosed must include any of the following charges which are made with regard to the loan: (1) interest; (2) loan fee; (3) finder's fee or similar charge; (4) time-price differential; (5) amount paid as discount; (6) service, transaction or carrying charge; (7) points; and (8) life insurance premium for any credit life insurance or other insurance which is a condition for giving credit.

In addition, the finance charge must be expressed as a percentage which is referred to as the "annual percentage rate" which is the finance charge expressed as a percentage of the loan. Other information that must be disclosed to the borrower includes the number, amount and due dates of payments, the sum of the payments to be made (excepted are first mortgages on dwelling purchases), default or delinquency charges, a description of the security for the loan, a description of any penalty charge for pre-payment and the method used for calculating any unearned part of the finance charge in case of pre-payment.

Truth in Lending and Regulation Z also affect advertising of terms for real estate financing. Generally, if an advertisement contains any more information about the financing than the amount of the loan and the annual percentage rate, the advertisement must also contain all of the information and terms set forth in the previous paragraphs that must be exposed to the borrower prior to the loan. If the amount of the loan and the annual percentage rate are the only two items that are listed in the loan advertisement, no more disclosure is required.

Truth in Lending and Regulation Z also specify that borrowers have the right to rescind any credit transaction in which a security interest is or will be retained or acquired on any real property that is used or is expected to be used as a principal residence of the borrower. This right of rescission extends until midnight of the third business day following the date of closing of the transaction. However, the right to rescind *does not apply* to a *first mortgage* or *trust*, including assumptions of existing loans, to *purchase* or *construct* a dwelling in which the borrower will reside.

Truth in Lending and Regulation Z also provide penalties upon lenders who violate these provisions, and these penalties include both civil action for up to twice the amount of the finance charge plus court costs and attorney's fees as well as criminal actions which could result in both confinement in jail and a fine for lenders who violate its provisions.

The Truth in Lending Act is a complex matter requiring study of the various specifics for the lender desiring to lend and acquire a security interest in real estate.

Variable interest rates

Of growing importance is the need of the lender to be able to maintain a favorable spread between money cost and interest earned, and of the potential borrower to be able to find mortgage financing when it is needed. The concept of the "variable rate" is now in the process of development with methods that can only be judged after they have stood the test of time. The fundamental procedure is to tie the interest rate applicable on the loan to a money market instrument which compares in maturity to a mortgage loan and permits the rate to float during its life. There has not been a general acceptance of the concept at this writing; however, there is a distinct acknowledgment of the need for more rapid change and response to market conditions.

Of particular interest in this regard is an act of the Pennsylvania Legislature in early 1974 which fixes the maximum rate at 2.5 per cent over long-term government bonds with the month's maximum rate to be announced during the month preceding. This Pennsylvania method fixes the rate for the term of the loan, but permits a quick response to market conditions. The conditions which brought about this legislation are solidly rooted in the problem of usury rates and the flight of mortgage funds from Pennsylvania to other states and into investments other than single family house mortgages.

REAL ESTATE SETTLEMENT AND PROCEDURES ACT

The Real Estate Settlement and Procedures Act of 1974 (RESPA) was enacted by the United States Congress (12 U.S. Code, Section 2601 and following) for the avowed purposes of providing consumers with greater and more timely information on the nature and costs of settlement procedures and protecting the consumer from unnecessarily high settlement charges. In 1975 the Act was amended by Congress to remove a requirement that lenders disclose to borrowers information about settlement costs 12 days in advance of the settlement.

As amended, RESPA provides disclosure requirement and prohibits certain activities with regard to what are described as "federally related mortgage loans." To be covered by RESPA, (1) the loan must be used to finance the purchase or some other transfer of the title to real property to the borrower where the primary purpose of the acquisition is not the resale of the property; (2) the loan must be secured by a first lien or first security interest on the real property; (3) the loan must be secured by real property consisting of less than 25 acres upon which either a mobile home, single family residence, duplex, triplex or four-plex is located or is to be constructed with the proceeds of the loan or upon which a condominium or cooperative unit is located; (4) the lender to be covered by RESPA must either have deposits insured by a federal agency or be regulated by the Federal Home Loan Bank Board or be a creditor making new investments in residential real estate loans aggregating more than one million dollars in one year or the loan must be insured by HUD or another federal agency. All four of these requirements must be met in order for the provisions of RESPA to apply.

If RESPA does apply to a particular loan, the lender must within three business days after receiving an application from an applicant provide that applicant with the following information:

1. The Special Information Booklet prepared by the Department of Housing and Urban Development which describes in layman's language the borrower's rights and obligations in connection with the loan. Contents and format of the Booklet are covered by regulations issued by the Department of Housing and Urban Development.

2. A "good faith estimate" of the settlement charges for services which the lender expects to be required at the time of the closing. These services include such expenses as real estate broker's commissions, loan origination fees, loan discounts, appraisal fees, credit report fees, assumption fees, notary fees, attorney fees, title insurance premiums, recording fees and others. If the lender requires that any of these services be provided by a specific individual or company, such as requiring that a particular lawyer or law firm be utilized, the lender must provide information about the provider of these services.

At the time of the settlement, a particular form prescribed by the Department of Housing and Urban Development must be used, and the borrower must, upon request, be given the opportunity to inspect this settlement sheet no later than one business day prior to the date of closing. The settlement statement must contain all charges being paid by the borrower.

In addition to its disclosure requirements, RESPA also prohibits the giving or accepting of any fee or kickback or the division of any fee as a reward or incentive to the lender to refer real estate settlement services to a particular individual or company. It does specifically permit, though, the payment of fees for services rendered, such as to attorneys, title companies and others.

RESPA also has an effect on the escrow account that may be required by a lender for the payment of taxes, insurance premiums or other charges with respect to the property that serves as security for the debt. RESPA eliminates the amount that can be required by the lender as an initial payment into escrow to approximately $1/12$ th of the total sum of taxes, insurance and other charges for the year plus an amount necessary to maintain an additional balance of up to $1/6$ th of the total annual amount due.

Summary

The preceding pages are but an introduction to a science which is constantly developing and changing. New methods are brought to the forefront, tried for a time, and then replaced. The basic principles remain the same, however, and a thorough knowledge of these will permit the practitioner to have an understanding of the field as change occurs, with emphasis provided by sociological, political or economic factors.

Questions on the Financing of Real Estate

1. Q. Financial intermediaries are those institutions and businesses that accept money from savers and lend it to borrowers. Name five financial intermediaries that invest in mortgage loans.
A. Commercial banks, mutual savings banks, savings and loan associations, life insurance companies and pension funds.
2. Q. Name some of the choices an investor has with regard to investments.
A. Government bonds, corporate bonds, savings accounts, mortgages, land contracts, real estate or stocks.
3. Q. Does the appraisal by the V.A. determine the purchase price the veteran can pay for a house?
A. No. An amendment effective May 7, 1968, changed the former law. The veteran must pay the difference in cash if the sales price exceeds the reasonable value.
4. Q. What procedure should you pursue if the V.A. appraisal value is less than contract price?
A. Try to adjust the sales price to the V.A. value or pay difference in cash.
5. Q. Explain the terms "Secondary Mortgage Market"—"Secondary Financing."
A. Secondary mortgage market refers to the resale market for existing loans. This has no connection with the meaning of the term "secondary financing" which refers to junior loans such as are made on second deeds of trust (mortgages) and the priority of such security on the loan is second to that of the senior first deed of trust (first mortgage).
6. Q. A real estate broker prepares an earnest money receipt wherein it is shown that cash has been received by the seller, when in fact, the said payment is represented by a note. The deal is to be F.H.A. financed. Does the broker have any liability in this connection?
A. Yes; subject to a Federal criminal prosecution, with a penalty of \$5,000 fine, up to 2 years imprisonment, or both.
7. Q. Does the F.H.A. permit secondary financing?
A. No; at the closing, the mortgagor certifies on the front of the F.H.A. commitment that he will not have outstanding any other unpaid obligations contracted in connection with the mortgage transaction. An untruth constitutes a violation of the U. S. Criminal Code.
8. Q. In its relation to real property, what is the meaning of the term "amortization"?
A. The liquidation of a financial obligation on real property by payments at regular stated intervals, or on an installment basis.
9. Q. Does the F.H.A. require a penalty for early pre-payment of the insured mortgage loan?
A. No. A pre-payment penalty of 1% of the original loan amount was once required, but has been eliminated.
10. Q. A broker accepts a deposit on a property and arranges for original F.H.A. financing. The appraisal does not come up to the prescribed amount. What should the broker do with the deposit money?
A. ☐ Retain the deposit.
☐ Deliver deposit to seller.
☒ Return the deposit to buyer.

- () Substitute a new buyer.
11. Q. What does the term "money market" mean?
A. The money market is made up of those institutions whose function is to supply money and credit to borrowers.
 12. Q. To what extent is business dependent on the availability of loanable funds?
A. Our whole business structure is built upon the assumption that funds will be available to those who can show ability and willingness to repay their loans.
 13. Q. How do investors and the lending institutions compete in the money market?
A. At any time the different parts of our economy that need loans are competing with each other for the available funds. On the other hand, the investors are competing with each other for the best investment and the most favorable rate of return.
 14. Q. How are interest rates determined for different kinds of loans?
A. The interest rate at any time is the result of the different forces which are competing for the investor's money. Supply and demand have a great effect on the rate. The risk involved is also a determining factor. The final rate is the result of supply in relation to demand, the risk involved, the business outlook, and many more economic forces.
 15. Q. How do the banks make loans on real estate?
A. Banks may loan out a certain percentage of the deposits which they have in the savings accounts of their customers. They cannot make real estate loans out of their checking deposits.
 16. Q. Do banks create the credit with which to make real estate loans?
A. No. It is impossible for a bank or savings institution to create the credit. The funds loaned are the savings or investment of individuals or firms.
 17. Q. How does an investor attempt to minimize the risks of investment?
A. By spreading his investments over different types of investments, he is able to decrease the overall risk of investment.
 18. Q. What is a mortgage?
A. A mortgage is an instrument by which the owner of certain property pledges it as security for a loan.
 19. Q. Is a mortgage a debt instrument?
A. No. It is only the instrument that pledges the property as security for the loan. The debt instrument is the note or bond signed by the borrower. Although both the note and the mortgage could be combined in one instrument, they are usually separate.
 20. Q. Explain what is meant when the mortgage is called a "dead pledge."
A. As long as the borrower makes his payments and fulfills all that he agreed to do in the mortgage, the instrument has no effect; it is inoperative. Only when the borrower fails to keep his promises or make proper payments does the mortgage "come alive" and make it possible for the creditor to seize the property.
 21. Q. What do people mean when they say they are "paying on a mortgage"?
A. They mean that they are paying on a note or bond which is secured by a mortgage on their property.
 22. Q. Does a mortgage on a piece of real estate prevent the owner from selling it?
A. No. The owner may sell the property whenever he wishes but he would still be responsible for the unpaid balance of the note he has signed. The buyer of the property would also have the mortgage as a lien against the property and in case of a foreclosure, he might lose his equity.
 23. Q. What restrictions are placed on national banks as to their lending on real estate?
A. National banks may lend only up to 90 per cent of the appraised value of real estate. They also may not make loans for a longer period than 30 years. These limitations do not apply to F.H.A. or G.I. loans but only to conventional loans.
 24. Q. What percentage of total assets of a national bank could be loaned on real estate?
A. 100% of its savings deposits.
 25. Q. How do savings and loan associations differ from banks?

- A. Savings and loan associations are unlike banks in that the funds deposited with them are not subject to check. They merely take the deposits of customers and loan them out. Although funds deposited with a savings and loan association can be withdrawn, the funds are not withdrawn by check, as are bank funds.
26. Q. How have savings and loan associations helped to encourage the use of amortizing loans?
- A. The savings and loan associations were pioneers in the use of the amortizing loan. They were the first to point out the advantages of such loans to both borrower and lender.
27. Q. Why have savings and loan associations had such a growth in recent years?
- A. The savings of the average family in the United States have increased a great deal in recent years and the savings and loan associations have catered to the small investor. They have encouraged thrift by taking very small deposits. As a result, many families have chosen these institutions in which to invest their savings.
28. Q. Why are life insurance companies one of the leading sources of mortgage loan money?
- A. In recent years more and more life insurance has been purchased by the typical family. The life span of the average person has also been materially extended in the past twenty years. As a result of these two factors, the insurance companies have had an ever-increasing amount of funds to invest and real estate loans constitute their second largest investment—about 31% of the total investment.
29. Q. What type of real estate loans do the insurance companies make?
- A. Insurance companies concentrate their mortgage-lending activities in the financing of income-producing properties rather than single family residential real estate.
30. Q. Why is it said that insurance companies have a kind of “revolving fund” out of which to make loans?
- A. Most of the loans made are amortizing and as a result the borrowers start to repay the loan at the end of the first month and make payments each month until the debt is repaid. This creates a stream of repayments flowing back to the company and these funds must be reinvested.
31. Q. How are mutual savings banks unlike commercial banks?
- A. Mutual savings banks are savings institutions and do not offer checking facilities as do commercial banks.
32. Q. Are mutual savings banks one of the principal sources of mortgage loans for the financing of real estate?
- A. Yes. Out of total assets at the end of 1975, these financial institutions, as a group, had invested over \$77 billion out of total assets for all mutual savings banks of \$121 billion.
33. Q. Why are private individuals often willing to make loans on real estate?
- A. Many people feel that real estate loans are more secure than are other similar investments. They also can see the property which is mortgaged as security for the loan and make their own decisions as to the quality and value of it. Land will not wear out or be destroyed by many common hazards.
34. Q. Explain why private loans on real estate often carry higher interest rates than loans made by institutional lenders.
- A. Private lenders are often willing to accept loans which institutional lenders will not make. However, such loans are more risky and the lenders ask for and get a higher interest to pay them for the extra risk.
35. Q. What are some of the responsibilities of institutional lenders?
- A. Institutional lenders have greater responsibility than private lenders because they are lending the savings of others. Therefore, they are responsible for seeing that the loans are sound investments for the borrower as well as the lender. They also have a responsibility to the public to be sure that the loans they make are economically sound. They must require that adequate security is maintained throughout

the life of the loan.

36. Q. What responsibility does the lending institution have toward the borrower?
A. The lender should make sure that the loan meets the individual's needs, but at the same time is not so large that the payments are a burden on his available income.
37. Q. What are some of the responsibilities of an appraiser for a lending institution?
A. The appraiser for a lending institution has a great deal of responsibility to both the lender and the borrower. His duty is to make a sound estimate of the loan value of the property under appraisal. Assigning too high or too low a value is not fair to either party involved. Therefore, an appraiser should use all the skills and techniques available as well as good sound judgment in arriving at a loan value of a property.
38. Q. What is meant by the statement that a G.I. loan is guaranteed?
A. A lending institution makes a loan to a qualified veteran. In the event the loan is not paid off the Veterans Administration will guarantee a certain amount of the loan.
39. Q. For what purposes may a veteran get a loan?
A. To buy or build a home.
40. Q. Can a commission fee be charged a veteran for obtaining a G.I. loan?
A. No commission may be charged the veteran although the lender may charge the borrower reasonable closing costs. The lender may also charge a reasonable flat fee for originating the loan.
41. Q. Who is eligible for a G.I. loan?
A. Under the Servicemen's Readjustment Act of 1944 and subsequent legislation, each honorably discharged veteran of World War II, the Korean conflict, and post-Korean veterans are entitled to receive G.I. loans, if qualified. There is no time limit on eligibility.
42. Q. What is meant by an entitlement?
A. The rights of a veteran to mortgage loan benefits.
43. Q. Would a widow of a veteran be eligible for a loan?
A. An unmarried widow of a veteran who was eligible but who did not use his entitlement would be eligible for a loan.
44. Q. Are children of a deceased veteran eligible?
A. No, only the unmarried widows.
45. Q. In a case where both man and wife are eligible, may they buy property together and in this way increase the amount which may be guaranteed?
A. Guarantee may not exceed 60% with a maximum of \$17,500 on a home loan.
46. Q. May a veteran join with a non-veteran in obtaining a loan?
A. Yes, but the guaranteed part only applies to that share of the loan belonging to the veteran and does not guarantee any part of the non-veteran's loan.
47. Q. How much can a veteran borrow and still have the loan guaranteed?
A. There is no limit on how much of a loan may be made by a lending institution to a veteran. However, real estate loans for home purposes are guaranteed only up to a maximum of \$17,500.
48. Q. For how long a period of time may a G.I. home loan be made and still be guaranteed?
A. For any period up to 30 years.
49. Q. Can a veteran use his eligibility for purchase of a farm?
A. No.
50. Q. Can a veteran get a guaranteed loan to go into business?
A. No. This program was eliminated by the Veterans' Housing Act of 1974.
51. Q. Can a veteran use his entitlement more than once?
A. Yes. This area was expanded by the Veterans' Housing Act of 1974.
52. Q. May a veteran obtain a loan in one state to buy real estate in another state?
A. Yes. However, most lenders will not make a loan if the funds are to be used in another state.

53. Q. Could a veteran obtain a G.I. loan to be used in a foreign country?
A. No. The property which is security for the loan must be located in the United States, its territories, or possessions.
54. Q. May a veteran qualify for a loan while attending school and receiving educational benefits?
A. Yes, if he can qualify with the lending institution.
55. Q. Could a veteran obtain a loan to buy a farm or business which he intends to operate on a part-time basis?
A. Yes, if the lending institution is willing to make the loan.
56. Q. What circumstances gave rise to the formation of the Home Owners' Loan Corporation?
A. The Home Owners' Loan Corporation was formed to refinance real estate loans which were in distress during the depression in the 1930's. The government felt that the refinancing of these loans would not only aid the home owners but also the lending institutions which held the mortgages.
57. Q. How widespread were defaults on home mortgages during the depression?
A. It has been estimated that as much as 80 per cent of the home loans were in trouble at some time during the depression.
58. Q. In what way was the Home Owners' Loan Corporation related to the Federal Housing Administration?
A. The Home Owners' Loan Corporation was set up to refinance existing loans on real estate. The function of the F.H.A. was to encourage the lending of money to home owners by insuring the loans made by the lending institutions.
59. Q. What parts of the F.H.A. Act are of the most interest to home owners or those who are interested in home ownership?
A. Title I of the law makes provision for insuring loans to home owners for the improvement or repair of existing buildings. Title II is concerned with the insuring of loans made by qualified lenders on one- to four-family dwellings.
60. Q. How high are the standards set by the F.H.A. for insuring loans?
A. In general, the standards set by the F.H.A. are quite high. Not only must the property qualify, but also the credit rating of the borrower is investigated and approved before the loan is accepted for insurance.
61. Q. Name some of the accomplishments of the Federal Housing Administration.
A. The F.H.A. has made the amortizing loan the standard procedure on home loans. It has standardized appraising processes. It has also been instrumental in raising the construction standards, and in better planning and land utilization. The second mortgage has almost disappeared due to the high loan-to-value ratio made possible by insured loans. The mortgage market has also been extended and stabilized by the F.H.A.
62. Q. How does a lending institution become approved for making F.H.A. insured loans?
A. The lending institution must apply to the F.H.A. for approval and answer certain questions about the firm and its practices. It must also be a corporation with assets in excess of \$100,000.
63. Q. Must all loans made by an approved lending institution be F.H.A. insured loans?
A. No. An approved lending institution has merely qualified to make insured loans, but it may make as many conventional or G.I. loans as it wishes.
64. Q. How does the insuring of loans benefit the lending institution?
A. The insuring of loans reduces the risk of the lending firm. This makes it possible for the lenders to make a higher percentage loan and to make longer maturity loans than would otherwise be possible.
65. Q. Does the government pay the cost of the insurance on F.H.A. loans?
A. No. The borrower pays for the cost of the insurance at a rate of $1\frac{1}{2}$ per cent per annum of the unpaid balance of the loan.
66. Q. What is meant by a budget loan?
A. A budget loan is one in which the monthly payments made by the borrower not

only cover interest and a payment on the principal, but also one-twelfth of such expenses as taxes, insurance, assessments and other charges against the property. The lending firm keeps these payments in a reserve account and pays the charges as they become due.

67. Q. What is meant by the term "variable interest rate" in mortgage lending?
A. This term refers to that interest rate which fluctuates in relation to a certain money market instrument.
68. Q. What is the procedure for applying for an F.H.A. loan?
A. The borrower chooses an approved lender and fills out the F.H.A. forms, and indicates the location of the property to be purchased. He also gives information as to his financial condition and a short history of his employment.
69. Q. How does a prospective home buyer choose a lending institution from which to obtain a loan?
A. The buyer may choose any local institution which is qualified to make F.H.A. loans. This is just a matter of personal choice.
70. Q. What is the procedure after the application for an F.H.A. loan is filed?
A. The lending institution will look over the application to see if it is complete and also to appraise the possibility of having the loan approved. If it is satisfactory, it will be sent to a regional F.H.A. office.
71. Q. Could an approved lender purchase F.H.A. mortgages from other firms rather than originate the loans?
A. Yes. A firm could purchase insured mortgages rather than make the loans, if it prefers to do so.
72. Q. What is the secondary mortgage market?
A. The secondary mortgage market is made up of those firms who buy mortgages from the firms who originate them.
73. Q. How does the government participate in this secondary mortgage market?
A. The Federal National Mortgage Association was authorized by Congress in 1938. It was formed to provide a secondary market for insured mortgages. It is known as "Fanny May" and has the power to buy insured mortgages from lenders who need additional funds to make further loans.
74. Q. What is a conventional loan?
A. A conventional loan is any loan which is not insured or guaranteed by a governmental agency.
75. Q. How do conventional loans compare with insured and guaranteed loans as to interest rates and length of maturity?
A. Conventional loans usually have about $1\frac{1}{2}$ per cent to 1 per cent higher interest rates and shorter maturities than comparable insured and guaranteed loans.
76. Q. Can a lending institution refuse to make F.H.A. loans if it has funds available for loans?
A. Yes. A lending institution may refuse to make F.H.A. loans if it wishes to do so.
77. Q. What is a land sales contract, also known as a land contract?
A. The prospective purchaser of a piece of property enters into a contract with the owner of the property, whereby he agrees to purchase the property at a stated price and the owner agrees to sell. The owner gives up possession to the buyer but does not give him the title until the final payment is made. Upon the final payment being made, the owner gives the buyer a deed which completes the transfer.
78. Q. What rights would a seller under a land sales contract have in case the buyer defaulted on his payments?
A. He may dispossess the buyer and recover possession of the property. The contract usually has a clause that states that in case the owner repossesses the property all of the payments made by the buyer shall be considered rent for the period of time he was in possession.
79. Q. To what extent is the owner financing the deal under a land sales contract?
A. The owner is actually financing all of the deal except for the down payment which

the purchaser makes when he first takes possession of the property.

80. Q. Could a land sales contract be used to finance a deal where the buyer is assuming a mortgage but does not have enough cash to buy out the owner's equity?
A. Land sales contracts are often used where the buyer is assuming a mortgage which states that a second lien cannot be placed on the property, yet the purchaser does not have enough cash to buy the equity of the owner. The seller takes back a land sales contract for the difference between the selling price and the down payment and the mortgage is assumed by the buyer. If the owner wishes to "cash out," he can sell the land sales contract.
81. Q. Under what circumstances is a purchase money mortgage given?
A. A purchase money mortgage is used where the seller of the property is willing to finance the deal for the buyer. The seller takes the down payment of the buyer in cash and takes a note and a purchase money mortgage for the remainder of the selling price. It is necessary for the purchaser to record the deed before the seller records the purchase money mortgage or it will appear on the records as if the buyer were mortgaging property which is recorded in the seller's name.
82. Q. Are the rights of a mortgagee under a purchase money mortgage the same as under other mortgages?
A. In many states, the rights of the mortgagee of a purchase money mortgage are the same as any other. However, it would constitute a second lien if there were an existing mortgage on the property at the time of the sale. In other states, the rights of the mortgagee are limited. The most common limitation is that in case of foreclosure where the property did not sell for enough to cover the unpaid balance of the purchase money mortgage, the holder of the mortgage could not get a deficiency judgment on the remainder.
83. Q. Do purchase money mortgages carry about the same interest rates as other mortgages?
A. The interest rates on all mortgages vary with the risk involved; this also applies to purchase money mortgages. Since such mortgages are often used to finance deals which would not be accepted by institutional lenders, the rates may be somewhat higher.
84. Q. Why do lending agencies usually prefer a conventional mortgage over a V.A. mortgage?
A. Because the interest returns are higher.
85. Q. Can a purchaser from a veteran assume the existing mortgage?
A. Yes.
86. Q. What is the difference between a conventional loan, an F.H.A. loan and a G.I. loan?
A. In a conventional loan, the mortgagee deals on its own and is not protected in any way by any government agency. In an F.H.A., the lending institution, the government (F.H.A.), reduces the risk of the lending firm. In a G.I. loan, if the loan is not paid, the V.A. will guarantee a certain amount of the loan. The money in each case is loaned by the lending institution.
87. Q. What are the two basic reasons for discount points?
A. 1. To allow the lender to compensate for different risks.
2. Attract money that would not otherwise be available at a fixed rate of interest.
88. Q. How can a veteran be certain that the buyer of his home will assume the veteran's debt responsibilities?
A. The veteran should include a provision in the sales contract that the purchaser will assume all his loan obligations and that the sale will not be consummated unless the V.A. and the lender approve the income and credit of the purchaser.
89. Q. How can this be accomplished?
A. The veteran should obtain written assurance from the lender and the Veterans Administration that the new buyer has been approved and that the veteran is released from liability.

90. Q. What type of mortgage loan is not guaranteed or insured by an agency of the United States government?
A. A conventional mortgage loan.
91. Q. Are private mortgage insurance companies involved only in the field of single family residential financing?
A. No. There are also companies that insure loans and leases related to income-producing property.
92. Q. What share of its income must a real estate investment trust return to the owners of its shares?
A. 90%.

True and False

(Answers for this section are on pages 702-703.)

1. An estoppel certificate is the same as a certificate of no defense. T F
2. The interest in or value of real estate in excess of mortgage indebtedness is called an equity. T F
3. A V.A. loan is insured by the Federal Housing Administration. T F
4. A borrower must make application to the local F.H.A. director for an F.H.A. loan. T F
5. A private lender is prohibited from lending more than 80 per cent of the market value of the property. T F
6. Building and loan associations generally lend only on conventional loans. T F
7. The building and loan associations were the first to amortize mortgage loans. T F
8. The mortgagee pays the costs of financing the loan. T F
9. Variable interest rates are interest rates which change in relation to certain instruments of the money market. T F
10. The "money market" is made up only of banks who lend on real estate mortgages. T F
11. The whole business structure of the country is based upon the assumption that responsible persons who have the ability and willingness to repay can borrow money. T F
12. In normal times there is not much competition for the investor's dollar. T F
13. At any time investors are competing with each other to obtain the best investment at the most favorable rates. T F
14. Interest paid for the use of money could be thought of as rent for the use of the money. T F
15. The interest rate which a lender can charge is usually fixed by the Federal Government. T F
16. The rate of interest on mortgage money at any time is determined by many complex economic factors. T F
17. The risk involved and the future business outlook do not materially affect the interest rate on mortgages. T F
18. At any time the amount of money available in our banking system is controlled to a considerable extent by the Federal Reserve System. T F
19. The funds which commercial banks use to lend on real estate come from the checking accounts of their depositors. T F
20. Banks are allowed to make loans on real estate from the savings of individuals, which are deposited in the savings accounts. T F
21. The funds which savings and loan associations use for real estate loans are the savings of individuals. T F
22. Investors tend to put their savings into the same type of investment regardless of business conditions. T F

23. Lending institutions that lend out the savings of individuals are held to a high degree of responsibility and business judgment. T F
24. One of the principles followed by investors is to diversify their investments by putting their savings into several types of investments in order to reduce the risk. T F
25. The making of loans to individuals backed by a mortgage on real estate as security has been in common use for only about 50 years. T F
26. A mortgage is a pledge instrument that gives the mortgagee the right to seize and sell the property in case of default. T F
27. A mortgage is a debt instrument. T F
28. A mortgage and a note might be incorporated into one instrument. T F
29. A mortgage gives the mortgagee certain rights in the real property of the mortgagor. T F
30. A mortgage could be called a dead pledge for it is inoperative as long as the owner of the property makes the payments and does not violate the covenants of the mortgage. T F
31. An owner of property who has a mortgage on it could not sell the property without paying off the debt. T F
32. If a buyer purchases a property "subject to" an existing mortgage, he would be liable for the debt as well as the original mortgagor. T F
33. A purchaser of a residence "assumed" an existing mortgage. He could be held responsible for the unpaid balance by the mortgagee. T F
34. When real estate is sold and the buyer assumes the mortgage, both the seller and the purchaser are liable on the unpaid balance of the mortgage. T F
35. National banks are allowed to lend up to 90% of the appraised value of a piece of real estate on a conventional loan. T F
36. National banks can make loans for only ten years or less on conventional loans. T F
37. Due to the legal restrictions placed upon national banks, they are quite conservative in their loan policies. T F
38. Savings and loan associations are much like banks because they offer checking services for their depositors. T F
39. The early savings and loan associations were conceived as a cooperative attempt to help members finance their homes. T F
40. Savings and loan associations still hold to the policy of making loans only to their own members. T F
41. The savings and loan associations were pioneers in the use of the monthly payment amortizing loan. T F
42. Savings and loan associations no longer encourage the small investor to deposit his savings with the firm because the cost of keeping the accounts is too great. T F
43. Savings and loan associations would be considered thrift organizations rather than banking institutions. T F
44. Most lending institutions feel that amortizing loans are beneficial to both lender and borrower. T F
45. Life insurance companies make only a small percentage of the real estate loans. T F
46. Life insurance companies are an important factor in providing funds for investment in mortgage loans. T F
47. Total assets of savings and loan associations are greater than those of life insurance companies. T F
48. Real estate mortgages make up the largest single type of investment held by insurance companies. T F
49. Most insured and guaranteed loans made by life insurance companies are for 25 years or longer. T F
50. Most insurance companies make both insured and conventional loans. T F
51. Cost of a survey that a mortgagee requests is the responsibility of the seller. T F
52. A mortgage clause that provides that the unpaid principal shall become due and

- payable upon sale of the property, is an illegal restraint upon alienation of the property. T F
53. The present-day amortizing loans make it necessary for insurance companies to continually make loans in order to keep their funds earning interest. T F
54. In recent years insurance companies have not increased their investments in mortgages as much percentagewise as some of their other investments. T F
55. Mutual savings banks are the smallest group of lending institutions that make loans on real estate. T F
56. The mutual savings banks pioneered the use of the long-term amortizing loan. T F
57. The mutual savings banks are true banks because they accept checking deposits as well as savings used for loans. T F
58. People who have funds to loan are often more willing to lend it on real estate because they feel it is more secure than on many other investments. T F
59. Private lenders will seldom accept loans on real estate if institutional lenders have turned down the loan. T F
60. Loans made by private individuals are often at higher rates of interest than those made by institutions due to the extra risk involved. T F
61. Institutional lenders are supervised by government agencies because of the responsibilities they undertake with regard to investment of funds belonging to others. T F
62. Firms which make loans on real estate have little responsibility to the public because they represent only the investor. T F
63. Veterans of both World War I and II are eligible for G.I. loans. T F
64. Each eligible veteran has a total entitlement of \$7,500 for home loan purposes. T F
65. G.I. loans are made by the Federal Government directly to the individual. T F
66. The Veterans Administration guarantees only 60% of a loan on a home. T F
67. G.I. loans cannot carry more than a $5\frac{1}{4}\%$ interest rate. T F
68. The purchase price of a property on which a G.I. loan is granted can be slightly higher than the appraised value of the property. T F
69. If a veteran defaults on a loan and the government must pay some of the loss, he is indebted to the Veterans Administration for the amount of the loss. T F
70. A non-veteran cannot purchase a property from a veteran and assume the G.I. loan. T F
71. In case of default and foreclosure on a G.I. loan, the Veterans Administration may pay in cash the guaranteed percentage of the loss to the lender. T F
72. The unmarried widow of an eligible veteran who had not used his entitlement would be eligible for a G.I. loan. T F
73. A lender cannot charge a veteran closing costs on a loan even though the costs appear to be reasonable. T F
74. A veteran could obtain a G.I. loan to buy a home. T F
75. A lending institution cannot refuse to give a veteran a loan if the veteran has a certified entitlement. T F
76. A veteran could get a G.I. loan to buy a duplex if he were going to live in part of it. T F
77. Only one entitlement is allowed even though both husband and wife are veterans. T F
78. The government role in mortgage financing is principally that of guarantor or insurer for the purpose of protecting the lender. T F
79. A lending institution may make G.I. loans for any period up to 30 years. T F
80. A veteran could not be receiving education benefits and obtain a G.I. loan at the same time. T F
81. Veterans' loans are the budget type where each monthly payment includes payment on such things as insurance, taxes, etc. T F
82. A lending institution cannot require a down payment if the veteran is buying a new house. T F

83. The Home Owners' Loan Corporation was set up during the depression to insure loans of individuals who wanted to build or buy a home. T F
84. The F.H.A. makes loans directly to home owners. T F
85. Most home loans which are insured by the F.H.A. are made under Title II of the Act. T F
86. Title I provides for unsecured home improvement and repair loans. T F
87. The F.H.A. believes that the principal security for a loan is in the property itself. T F
88. The government pays the cost of insuring F.H.A. loans. T F
89. F.H.A. loans are budget type loans in which each monthly payment includes part payment of taxes, insurance, and other such expenses. T F
90. A borrower may choose any approved lending institution from which to obtain an F.H.A. loan. T F
91. Lending institutions cannot refuse to accept an application for an F.H.A. loan if they have available funds to loan. T F
92. The "Fanny May" organization was set up by the government to create a secondary mortgage market to which lending institutions could sell insured mortgages when they needed funds for additional loans. T F
93. Lenders engaged in F.H.A. insured lending have been forced to foreclose on only about 1% of the real estate for security. T F
94. The purpose of the discount in real estate financing is to increase the yield to the lender. T F
95. Conventional loans are made by both individuals and lending institutions. T F
96. A conventional loan could not be an amortizing loan. T F
97. The F.H.A. considers the credit rating of the individual as well as the security of the property when approving a loan to be insured. T F
98. Conventional loans usually carry a higher interest rate because they are not insured or guaranteed. T F
99. A conventional loan could not be a budget mortgage. T F
100. A land sales contract is just another type of mortgage. T F
101. Title to property financed by a land sales contract remains in the seller or in the hands of the escrow agent until the final payment is made. T F
102. The interest rate on land sales contracts is usually higher than on most mortgages. T F
103. The seller of a piece of property under a land sales contract could not sell the contract because the buyer of the property might object. T F
104. Land sales contracts are sometimes used to finance deals where the lender on the existing mortgage will not allow a second mortgage. T F
105. If a deal using a land sales contract is closed through escrow, the seller would give a deed to the escrow agent made out in the name of the buyer. T F
106. When a mortgage has been paid off, the mortgagor should have the mortgagee sign a satisfaction of the mortgage and record this in order to clear the title of the lien. T F
107. Most firms who make construction loans do it in order to obtain a "permanent" loan on the property when the building is completed. T F
108. A construction loan requires little supervision by the lender because the builder has agreed to build according to plans and specifications. T F
109. The ability of a broker to find adequate financing for his prospects is one of the most important factors in making sales. T F
110. The government by using its controls over the mortgage market should attempt to promote an orderly market and to prevent too much or too little available mortgage money. T F
111. If a note given in a mortgage transaction is later outlawed by the Statute of Limitations, it would also extinguish the mortgage. T F
112. Profit on the sale of real property which has been held six months or longer may

- be classified as a capital gain and maximum Federal Tax would be about 25 per cent. T F
113. Congress regulates the interest to be charged upon F.H.A. loans. T F
114. An F.H.A. mortgage gives the purchaser greater security as to construction than does a conventional mortgage. T F
115. Endowment funds may not be loaned out on individual mortgages. T F
116. A single mortgage can be part conventional and part F.H.A. T F
117. A mortgage is similar to a land purchase contract in that it permits the purchase of a property through periodic payments. T F
118. It is possible to procure a G.I. loan to purchase livestock and equipment for a farm. T F
119. A residence subject to a lien resulting from a G.I. guaranteed loan may not be sold except to another qualified veteran. T F
120. The agency of the Federal Government which insures a V.A. loan is the Veterans Loan Association. T F
121. An F.H.A. insured loan may be repaid prior to maturity, but only with an added penalty fee. T F
122. The agency which insures an F.H.A. loan is the Home Owners' Loan Corporation. T F
123. A minor part of the funds invested by savings and loan associations comes from checking accounts. T F
124. Insurance companies operate under such restrictive laws that they are of minor importance in mortgage lending. T F
125. Savings and loan associations are major factors in mortgage lending because this is the reason for their existence. T F
126. The large increase in recent years in time and savings deposits of commercial banks has made them much more active in the field of real estate financing. T F
127. Commercial banks are prohibited by federal regulations from acting as mortgage loan correspondents for other investors. T F
128. In addition to the F.H.A. and V.A. regulations which govern such mortgages, the state laws are restrictive as to interest rate and term of loan. T F
129. Savings and loan associations cater primarily to investors of large sums of money. T F
130. Savings and loan associations specialize in loans secured by single family residences. T F
131. Savings and loans are prohibited by law from investment in loans secured by apartment houses. T F
132. Yield and diversification of investment are major considerations for all investors. T F
133. In 1920 assets of life insurance companies were \$8 billion and, toward the end of 1975, their assets had increased to over \$250 billion. T F
134. Real estate mortgages as a group are the major investment of life insurance companies. T F
135. Real estate mortgages compose one group of the major investments of life insurance companies. T F
136. Corporate securities are the major investment by groups of life insurance companies. T F
137. Life insurance companies, because they are regulated by government, need not concern themselves if loans are not repaid. T F
138. In spite of longer mortgage terms, that is, up to 30 years, mortgage loans have an average life of 12 to 13 years. T F
139. Yearly pay off and amortization of real estate loans held by life insurance companies requires reinvestment. T F
140. During the two or three years prior to 1971, life insurance companies favored mortgage loans. T F
141. Rate is only secondarily important in the investment of mortgage funds. T F

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| 142. Some major insurance companies take equity positions in real estate. | T | F |
| 143. In addition to charging interest on mortgage loans, life insurance companies sometimes require a percentage of the rents received by the owner-borrower over a specified minimum. | T | F |
| 144. Charges in addition to interest which increase yield are not a hedge against inflation. | T | F |
| 145. Mutual savings banks are for the most part located west of the Mississippi River. | T | F |
| 146. Mutual savings banks invest nationwide in accordance with the regulations under which they operate. | T | F |
| 147. Although the smallest group of lending institutions, mutual savings banks are major contributors to mortgage lending. | T | F |
| 148. Pension funds are decreasing their mortgage investments. | T | F |
| 149. Institutional lenders lend the savings of other people | T | F |
| 150. Conscientious, careful lending benefits borrower and lender. | T | F |
| 151. VA guaranteed loans carry a greater risk than F.H.A. insured loans. | T | F |
| 152. A veteran may use his or her eligibility more than once. | T | F |
| 153. Veterans who default on G.I. mortgage loans cannot be held liable for the loss incurred. | T | F |
| 154. G.I. loans and F.H.A. loans require appraisal approval by the respective agency of the government for the protection of the purchaser only. | T | F |
| 155. The Secretary of Housing and Urban Development (HUD) sets the maximum rate on F.H.A. loans within the limits of the authority given him by Congress. | T | F |
| 156. The Veterans Administration does not guarantee mortgage loans which exceed "reasonable value." | T | F |
| 157. Legal maximum rates as set for V.A. and F.H.A. loans become in reality "minimum" rates. | T | F |
| 158. Variable interest rates refer to those rates charged by different lenders. | T | F |
| 159. Regulation Z implements the "Truth-in-Lending Act." | T | F |
| 160. The term "floating" rate refers to that interest rate used in financing ocean-going vessels. | T | F |
| 161. The F.H.A. Digest of Insurable Loans provides an overall view of the National Housing Act. | T | F |
| 162. Private mortgage insurance corporations are an important factor in providing savings and loan associations with substantial benefits from careful underwriting of loans. | T | F |
| 163. A "basis point" is equal to $\frac{1}{100}$ th of one per cent. | T | F |
| 164. Constant payment tables refer to a method of computation of periodic payments of interest and principal. | T | F |
| 165. G.N.M.A. securities have revolutionized the approach of lenders to mortgage financing. | T | F |
| 166. The use of Ginnie-Mae backed securities discourages the sale of fractional interests in blocks of mortgages. | T | F |
| 167. Investors in G.N.M.A. mortgage-backed securities secure yields comparable to those offered by high grade corporate issues. | T | F |
| 168. G.N.M.A. mortgage-backed securities are backed by the full faith and credit of the United States government. | T | F |
| 169. Certified entitlement to a V.A. mortgage guarantees the G.I. a mortgage. | T | F |
| 170. The secondary mortgage market deals in second mortgages. | T | F |
| 171. An F.H.A. mortgage is one usually held by a private lending agency and insured by the government. | T | F |
| 172. A simple mortgage can be part F.H.A. and part V.A. | T | F |
| 173. The annual interest rate on a \$5,000 loan is $7\frac{1}{2}\%$ when the quarterly payments to principal and interest are \$139.55 and the term of loan is 15 years. | T | F |
| 174. A broker should advise a buyer as to his legal rights where there is a dispute be- | | |

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| tween buyer and mortgagee. | T | F |
| 175. At the closing of a real estate transaction, the seller can refuse to accept the buyer's personal check in payment of the consideration price. | T | F |
| 176. A broker is entitled to a fee for preparing the mortgage papers. | T | F |
| 177. A pledge refers to the assurance a borrower gives to a lender. | T | F |
| 178. "Discounts" refer to those mortgage loans that carry interest rates below the market. | T | F |
| 179. "Points" and "discount" are synonymous terms. | T | F |
| 180. Points on the mortgage are paid by the buyer. | T | F |

Multiple Choice

(Answers to this section are on page 703.)

1. When a mortgagor can secure additional amounts up to but not exceeding the original amount, it is known as
 - (a) escalating mortgage.
 - (b) construction mortgage.
 - (c) an open-end mortgage.
 - (d) an F.H.A. mortgage.
2. A certificate of eligibility applies to
 - (a) a former bankrupt.
 - (b) an applicant for a V.A. loan.
 - (c) an applicant for a second mortgage.
 - (d) an applicant for an F.H.A. mortgage.
3. A purchaser of an existing mortgage should obtain from the mortgagor
 - (a) a certificate of no defense.
 - (b) a financial statement.
 - (c) a copy of federal income tax for the previous year.
 - (d) a guarantor.
4. A borrower, who pays only the interest semi-annually until the debt matures, has
 - (a) a closed mortgage.
 - (b) an open-end mortgage.
 - (c) a blanket mortgage.
 - (d) a straight mortgage.
5. In obtaining a mortgage loan insured by the Federal Housing Administration, the appraisal fee is charged to the
 - (a) mortgagor.
 - (b) mortgagee.
 - (c) broker.
 - (d) no charge is made.
6. In obtaining mortgage financing, which item is paid by the seller?
 - (a) Originating fees.
 - (b) Discounts or points.
 - (c) Survey.
 - (d) None.
7. A broker negotiated a sale at \$27,000. The buyer requires a mortgage of \$26,000. The broker then prepares a second set of agreements, which are signed by seller and buyer, reciting a purchase price of \$29,000. The latter are presented to a federal building and loan association for a loan. Under these circumstances:
 - I. the broker is liable for a criminal act.
 - II. the seller and buyer are liable for a criminal act.
 - (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
8. A "wrap-around" mortgage may be arranged, if
- I. an existing mortgage is subject to low interest payments.
 - II. the debtor is willing to refinance at a higher interest rate.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
9. The Federal Truth in Lending Act was passed by
- (a) the United States Congress.
 - (b) the Federal Department of Housing and Urban Development.
 - (c) the Office of Equal Opportunity.
 - (d) the Real Estate Commission.
10. Which one of the following pays the one per cent service charge on an F.H.A. mortgage?
- (a) Seller.
 - (b) Buyer.
 - (c) Mortgagee.
 - (d) Broker.
11. "Discounts points"
- (a) decrease the yield to the lender.
 - (b) increase the yield to the lender.
 - (c) increase the yield to the seller.
 - (d) decrease yield to the broker.
12. In an "conventional loan," the interest rate, compared to a V.A. or F.H.A. mortgage loan, is usually
- (a) higher.
 - (b) lower.
 - (c) fixed by law.
 - (d) the same.
13. The form of mortgage often used in mortgage financing is
- I. the open-end mortgage.
 - II. the blanket mortgage.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
14. The best way for a home owner to liquidate a mortgage debt is
- I. employer withholding monthly payments from the mortgagor's salary.
 - II. amortization on a monthly basis.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
15. Construction loans for apartment buildings are paid off
- I. through amortization.
 - II. by means of permanent financing at the end of construction.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
16. The following applies to personal risk in mortgage lending:
- I. character.
 - II. call loan.

- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
17. In lending funds in the mortgage market, the mortgagee must guard particularly against
- I. obsolescence, whether functional or economic.
 - II. the inability of the borrower to repay the debt.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
18. Funds for conventional single family mortgage loans are supplied by
- I. "Fannie Mae."
 - II. savings and loan associations.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
19. The greater risk to a mortgage lender is found in
- I. construction loans.
 - II. permanent loans.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
20. Amortization of mortgage loans was first developed by
- I. F.H.A.
 - II. commercial banks.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
21. Forces which determine interest rates for mortgage loans are
- I. economic.
 - II. local.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I or II.
22. Banks lend money for long term mortgage loans from
- I. demand deposits.
 - II. time deposits.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
23. Federal Savings and Loan Associations make a major contribution through their lending activities to
- I. standardized underwriting requirements.
 - II. housing for the population of the United States.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

24. The largest sources in single-family home financing on a conventional basis are
- I. national banks.
 - II. savings and loan associations.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
25. Mortgage lending by insurance companies is always restricted to a maximum of
- I. 75% of appraisal.
 - II. $66\frac{2}{3}\%$ of appraisal.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
26. "Overage" in the contract for a mortgage loan refers to
- I. properties over 45 years old.
 - II. that yield on the loan which exceeds the interest rate and has its basis in the achievement of rental income by the borrower-owner in excess of a set minimum.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
27. Nationwide, which category of financial institutions has the smallest total dollar investment in mortgage loans?
- I. National banks.
 - II. Savings and loan associations.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
28. Mortgage loans entailing more than average risk are usually made by
- I. pension funds.
 - II. private lenders.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
29. Under Title 38, United States Code (formerly the Servicemen's Readjustment Act of 1944, as amended), each eligible veteran has an entitlement for loan purposes in the aggregate amount of
- I. \$17,500.
 - II. \$15,000.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
30. The amount of loan guarantee provided by the Veterans Administration is restricted to a \$17,500 maximum, but not more than what percentage of the loan?
- I. $66\frac{2}{3}\%$.
 - II. 75%.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
31. The statutory rate of interest for V.A. guaranteed (G.I.) loans under the present regula-

- tions is
- I. 8%.
 - II. a rate to meet the mortgage market.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
32. V.A. and F.H.A. interest rate maximums are set by
- I. the Congress of the United States.
 - II. the President by Executive Order.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
33. Regardless of the term stated in the single family mortgage contract, these loans are usually paid off in
- I. 5 to 10 years.
 - II. 20 years.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
34. If a non veteran purchases a property encumbered by a V.A. guaranteed or insured mortgage, the loan
- I. must be repaid.
 - II. can be assumed by the purchaser.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
35. Entitlement to a G.I. loan for veterans
- I. expires for World War II veterans on July 15, 1982.
 - II. expires for veterans of the Korean conflict on January 1, 1999.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
36. For certain eligible post war veterans, eligibility
- I. expires on January 1, 1999.
 - II. has no time limit.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
37. Commercial banks are classified as either
- I. nationally chartered.
 - II. state chartered.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
38. Many states permit lending institutions to lend above the statutory ratio
- I. if the excess above the statutory limit is insured against default.
 - II. if the loan is exceptionally well collateralized.
 - (a) I only.

- (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
39. A land sale or installment purchase contract can sometimes be used as
- I. a vendor's lien.
 - II. a junior financing instrument.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
40. Discounts or "points" in mortgage lending refer to
- I. a charge to the buyer.
 - II. a reduction in the price of the real estate purchased.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
41. "Points" are determined by
- I. the American Bankers Association.
 - II. conditions in the money market.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
42. In order to qualify as an approved F.H.A. lender, a corporation must have assets of
- I. at least \$50,000.
 - II. at least \$100,000.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
43. Mutual savings banks are closely allied in method of operation to
- I. commercial banks.
 - II. savings and loan associations.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
44. Life insurance companies are interested in mortgage loans as investments because of
- I. yield.
 - II. security.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
45. Pension funds as mortgage lenders are a force in the mortgage market. During recent years, their position with regard to this type of lending has
- I. increased.
 - II. decreased.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
46. If your responsibility was the investment of funds for a life insurance company, you would be primarily interested in

- I. returning funds available for investment to the geographic areas where they were generated.
 - II. debentures of large companies.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
47. The secondary mortgage market refers to
- I. sources of second mortgage loans.
 - II. investors who provide mortgage funds by purchasing them from originators.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
48. Under the V.A. guaranty program, upon foreclosure, the Veteran's Administration may
- I. purchase the property.
 - II. pay the guaranty.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
49. To which one of the following do Truth in Lending and Regulation Z apply?
- (a) Only to real estate loans less than \$25,000.
 - (b) Only to real estate mortgages for personal, family, household or agricultural purposes less than \$25,000.
 - (c) Only to real estate mortgages for personal, family, household or agricultural purposes in any amount.
 - (d) Only to commercial or business loans in any amount.
50. Truth in Lending and Regulation Z have the effect of
- (a) setting ceilings for interest rates and other loan charges.
 - (b) requiring disclosure of interest rates and other loan charges.
 - (c) both of the above.
 - (d) neither of the above.
51. The right of rescission pursuant to Truth in Lending and Regulation Z applies to what transactions?
- (a) To all real estate transactions.
 - (b) To all real estate transactions involving more than \$25,000.
 - (c) To all real estate transactions except those involving the borrowing of money by first mortgage or trust to purchase or construct the dwelling in which the borrower will reside.
 - (d) Only to business or commercial loans.
52. To what does the "annual percentage rate" referred to in Truth in Lending and Regulation Z refer?
- (a) The annual interest rate.
 - (b) All finance charges on the loan expressed as an annual percentage.
 - (c) The payment required for a default in the loan expressed as a percentage.
 - (d) The pre-payment penalty expressed as a percentage.
53. What must the "finance charge" that is to be disclosed to the borrower pursuant to Truth in Lending and Regulation Z include?
- (a) Interest to be charged on the loan.
 - (b) Time-price differential.
 - (c) Any points charged to the borrower.
 - (d) All of the above charges.
54. A mortgage loan on a commercial property, which includes a fixed interest percentage, plus a percentage of rental income, over a certain amount, is termed a

- (a) built-in investment mortgage.
 - (b) wrap-around mortgage.
 - (c) participating mortgage.
 - (d) open-end mortgage.
55. The F.H.A. insurance of mortgage loans provides protection to the
- I. lender.
 - II. borrower.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
56. The F.H.A. made major contributions to mortgage lending by doing the following:
- I. provided underwriting standards.
 - II. helped to provide a secondary mortgage market so that funds available in capital surplus areas could be invested in areas of capital shortage.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
57. F.H.A. credit underwriting of loans for insurance has been responsible for
- I. low foreclosure rates.
 - II. the decreased quality of housing.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
58. In the case of a land sales contract, a seller of real estate may
- I. foreclose on the mortgage instrument.
 - II. "cash out," that is, sell the instrument.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
59. A purchase money mortgage is
- I. that which is taken back by the seller from the buyer at the time of the sale.
 - II. of no value.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
60. Discounts in the field of mortgage financing may be defined as
- I. a percentage of the mortgage amount paid by a seller to a lender in order to increase the lender's yield on the loan.
 - II. useful in meeting market conditions where the interest rate is fixed by law.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
61. The yield on mortgage is controlled by
- I. the F.H.A.
 - II. individual states through usury laws.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

62. The use of pledges is common to
 - I. savings and loan associations.
 - II. commercial banks.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
63. The use of pledges has been
 - I. eliminated.
 - II. of benefit as a financing vehicle for real estate.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
64. Conventional mortgage loans
 - I. are sometimes insured in part by private mortgage insurance companies.
 - II. are insured by the Federal Housing Administration or guaranteed by the Veterans Administration.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
65. With respect to encouraging the growth of the fully amortized loan, the Federal Housing Administration has
 - I. made a major contribution to mortgage lending.
 - II. been able to regulate conventional financing.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
66. The Federal Housing Administration was formed in
 - I. 1900 and known as the Home Owners Loan Corporation.
 - II. 1913 as a subsidiary activity of the Federal Reserve System.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
67. In the case of a V.A. guaranteed or insured loan, the owner-borrower may
 - I. sell the property subject to the loan.
 - II. not repay the loan ahead of schedule.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
68. A mortgagee, in the case of a G.I. loan, is required to
 - I. report all costs to the Veterans Administration.
 - II. appraise the real estate.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
69. The Veterans Administration will now guarantee loans wherein the purchase price exceeds the reasonable value if
 - I. the veteran pays in cash from his own resources the difference between purchase price and appraisal (reasonable value) and the loan does not exceed the appraisal.

- II. the veteran signs the required certification.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 70. A prospective home buyer desiring an F.H.A. insured loan applies to
 - I. the F.H.A.
 - II. an insured savings and loan association or a commercial bank.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 71. An authorized agent appointed by a secondary market mortgage lender to process and service its mortgage loan investments is described as
 - I. a loan investigator.
 - II. a mortgage loan correspondent.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 72. A requirement of a borrower under an F.H.A. insured loan is that he
 - I. not have other than the mortgage debt in connection with the transaction.
 - II. certify that he will occupy the premises if that is a condition of the F.H.A. approval.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 73. Mortgage lending is a dominant factor in the development of
 - I. highway systems.
 - II. city and rural communities.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 74. The following refers to those institutions which function to make credit available to borrowers
 - I. financial intermediaries.
 - II. F.H.A., V.A., G.N.M.A. and F.N.M.A.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 75. Rent for the use of money is called
 - I. monthly finance charge.
 - II. interest.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 76. The rate of interest on a mortgage loan charged to a customer is determined by many complex economic, social and legal factors. Those most important are
 - I. applicable state usury laws.
 - II. the Federal Reserve System.
 - (a) I only.

- (b) II only.
 - (c) both I and
 - (d) neither I nor II.
77. Funds for real estate investment are principally obtained from
- I. savings of firms and individuals.
 - II. the Eurodollar market.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
78. Banks are restricted from using one of the following sources of funds for investment in real estate mortgage loans
- I. checking accounts.
 - II. capital.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
79. One of the basic principles of investment is
- I. invest all funds available.
 - II. diversification.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
80. A borrower who gives a creditor a mortgage which pledges property as security may be said to have
- I. sold his property.
 - II. given a "dead pledge."
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
81. One reason for increased activity on the part of commercial banks in real estate financing is
- I. desire for more secured loans.
 - II. changes in Comptroller and Federal Reserve regulations.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
82. Savings and loan associations have changed in character over the years so that they are now
- I. functioning like commercial banks.
 - II. a major source of single family mortgage lending.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
83. Savings and loan associations were pioneers in
- I. use of amortizing loans.
 - II. functioning as financial intermediaries to assist purchasers of single-family houses and to serve the relatively small investor.
 - (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
84. During recent years, the assets of life insurance companies have changed. That change has been
- I. brought about by regulation.
 - II. a phenomenal increase in assets.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
85. The availability of life insurance funds for mortgage lending is directly affected by
- I. bond and direct placement yields.
 - II. applicable laws.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
86. Some major insurance companies have taken equity positions as part of the loan contract. This applies to
- I. residential loans.
 - II. loans on small shopping centers.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
87. Mutual savings banks are concentrated in the eastern United States. They widened their area of investment
- I. with the advent of F.H.A. and V.A. guaranteed loans.
 - II. after World War I.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
88. Institutional lenders, because they undertake the responsibility for lending the savings of others
- I. are carefully controlled by law.
 - II. evidence a high degree of responsibility.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
89. Once a veteran uses his eligibility for a V.A. guaranteed or insured loan, he can acquire another such loan if he is eligible for
- I. reenlistment in the armed forces.
 - II. disability compensation.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
90. After foreclosure by a lender of a V.A. guaranteed or insured loan, the Veterans Administration may
- I. pay the guaranteed portion of the loan to the lender and permit the lender to dispose of the property.
 - II. purchase the property from the lender for the unpaid balance of the loan.
- (a) I only.

- (b) II only.
 - (c) both I and II.
 - (d) Neither I nor II.
91. The buyer of a property subject to a mortgage loan
- I. assumes complete liability for repayment of the debt.
 - II. does not assume any liability unless he enters into a contract of assumption between himself and the seller-borrower.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
92. A buyer who assumes a mortgage loan
- I. takes responsibility for repayment of the debt.
 - II. needs financial assistance.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
93. In 1933, the Home Owners Loan Corporation was formed to help in refinancing mortgage loans in default. Foreclosure filings were then
- I. being handled by the F.H.A.
 - II. almost 1000 per day.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
94. The Truth-in-Lending Act, implemented by Regulation Z, was passed by Congress in order to
- I. more clearly disclose costs of borrowing to potential debtors and give them an opportunity to compare such costs.
 - II. protect lenders from unscrupulous borrowers.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
95. A publication by the Federal Housing Administration, which gives an overall view of the F.H.A. programs, is
- I. F.H.A. Underwriting Manual.
 - II. Digest of Insurable Loans.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
96. F.H.A. insured loans provide insurance coverage against default to
- I. both borrower and lender.
 - II. lender only.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
97. F.H.A. foreclosures are
- I. high because of the low downpayments.
 - II. low because of effective underwriting.
 - (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
98. It is the opinion of some students of mortgage lending that the F.H.A. has contributed materially to
- I. local building codes.
 - II. standardization of mortgage loan underwriting.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
99. In the field of conventional mortgage lending, private mortgage insurance companies have made important contributions. They have
- II. provided a review of the proposed investment by qualified underwriting specialists.
 - II. provided insurance of a portion of the loan against default.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
100. In order to simplify the calculation of mortgage payments, we have available a set of tables which express payments of interest and principal as a percentage. These tables are called
- I. constant payment tables.
 - II. interest percentage tables.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
101. Determining the needs and abilities of the prospective purchaser with a suitable property is known as
- I. underwriting the risk.
 - II. qualifying the prospect.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
102. When the F.H.A. insures a lender against default, the insurance
- I. carries the full faith and credit of the United States Government.
 - II. is backed by the insurance fund established by the Federal Housing Administration.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
103. A mortgage loan made by a private lender is always
- I. conventional mortgage loan.
 - II. an open mortgage.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
104. Who pays the one percent service charge on an F.H.A. mortgage?
- (a) The seller.
 - (b) The mortgagee.
 - (c) The mortgagor.

- (d) The broker.
- 105. When was the Real Estate Settlement and Procedures Act originally passed by the United States Congress?
 - (a) 1938.
 - (b) 1965.
 - (c) 1970.
 - (d) 1974.
- 106. What is the purpose of the Real Estate Settlement and Procedures Act?
 - (a) To limit the charges that can be made for settlement or closing services by mortgage lenders.
 - (b) To require disclosure of settlement charges and prohibit certain fees and kick-backs.
 - (c) Both.
 - (d) Neither.
- 107. When does the Real Estate Settlement and Procedures Act apply to all "federally related" mortgage loans?
 - (a) Only when the loan is used to finance the purchase or transfer to the borrower of the title to the secured real estate.
 - (b) When the loan is for the purpose of acquiring the title to real estate or providing funds for the improvement or construction of a residence on the property already owned by the borrower.
 - (c) Both.
 - (d) Neither.
- 108. In making a loan covered by RESPA, the lender is required to
 - (a) make a disclosure of all charges not later than 12 days in advance of the date of settlement.
 - (b) provide only a statement of settlement charges and fees at the time of the settlement.
 - (c) provide the borrower with the HUD-approved Special Information Booklet and a good faith estimate of settlement costs within three business days after the application is received for the loan.
 - (d) advise the borrower that he has the right in all cases to rescind the loan for at least three days after the loan is made.
- 109. The Real Estate Settlement and Procedures Act is applicable to
 - (a) states where there is not a similar state law.
 - (b) all states.
 - (c) states where at least one billion dollars in real estate mortgage loans are made in one year.
 - (d) states where there is a HUD regional office.
- 110. The Federal Truth In Lending Act was passed by
 - (a) the state legislature.
 - (b) the United States Congress.
 - (c) Federal Reserve System.
 - (d) the State Real Estate Commission.
- 111. Regulation "Z" was enacted by the
 - (a) United States Congress.
 - (b) state legislature.
 - (c) state Department of Banking.
 - (d) Board of Governors of the Federal Reserve System.
- 112. The main purpose of the Truth In Lending Act and Regulation "Z" is to
 - (a) set a maximum interest rate on loans.
 - (b) mandate that all mortgage loans bear the same interest rate.
 - (c) require full disclosure of all credit terms, so that a borrower may shop among lenders.
 - (d) set a uniform finance charge on all loans.

113. In a mortgage payable at the end of five years,
- (a) the principal debt is reduced monthly plus interest for the month.
 - (b) loan to value ratio does not exceed $66\frac{2}{3}$ per cent.
 - (c) the principal is paid at the end of the term.
 - (d) the lender has greater options, upon default by mortgagor.

MORTGAGES

MORTGAGES CONSTITUTE a very important phase in the development and growth of home ownership. They represent an extension of long-term credit, and the function of mortgage-lending may be said to be to promote the economic, social, and financial welfare of the community. Mortgages are also recognized as a dominant factor in the development of city and rural communities through promotion of home, farm, commercial, industrial, and investment ownership.

Definition and history

A mortgage is a pledge of real estate as collateral security for the repayment of money or the performance of some act. Since early days the practice of pledging property for repayment of a debt has been prevalent. The mortgage grew out of the pledges of land for debt by the Anglo-Saxons. The early encumbrances operated in a very summary manner. If the debtor failed to meet his debt upon the exact day due, the pledged land became the absolute property of the creditor. A wide difference between the value of the land and the amount of the debt was of no consequence. This resulted at times in such injustice and hardship that the courts began to interfere. The legal principle, Equity of Redemption, was then developed which permitted the debtor, within a statutory period, to repay the debt together with a penalty in the form of interest and to reclaim his property. The pendulum of justice now swung to the other extreme, and a creditor taking property for nonpayment of a debt found it difficult to dispose of the same because a purchaser was reluctant to buy or improve since the debtor might turn up and demand the return of his property. The courts again stepped in and allowed the creditor to file a bill to foreclose the debtor's equity of redemption, and a day was fixed on or before which the debtor was required to pay up or suffer his property to be lost.

This period, by statute, was usually six months or one year. Upon foreclosure on the mortgage, the property is sold at public sale by the sheriff. Under a procedure known as *strict foreclosure*, if the debtor did not redeem his property by payment to the mortgagee, the latter then became the absolute owner. This procedure now exists in the states of Connecticut and Vermont. This modification was the forerunner of the present-day mortgage. The term mortgage comes from the old French *mort* (dead) and *gage* (pledge).

Transfer of title—lien—deed of trust

In some states a mortgage is actually a *transfer* of title to real estate upon condition, as security for the payment of a debt. Between owner and mortgagee, it is a conveyance of real estate; as to third parties, it is a lien. In other states, a mortgage is considered and treated strictly as a lien. A lien is a hold or claim which a person has upon the real property of another, as security for some debt or charge. A lien is an encumbrance and a person purchasing real property, encumbered by a mort-

gage, takes the property subject to the lien. In both cases of transfer of title, or lien, possession of the premises remains in the owner-debtor.

In a number of states, a deed of trust is used in lieu of a mortgage instrument. (Arizona, California, Colorado, Idaho, Illinois, Indiana, Minnesota, Mississippi, Missouri, New Mexico, North Carolina, Tennessee, Texas, Virginia, West Virginia and the District of Columbia). A "deed of trust" is in legal effect, a mortgage with power to sell upon default: *Johnson v. Snell*, 504 S.W. 2d 397 (Tex. 1973).

Trust deeds have the same function as a mortgage on real estate. There are three parties to a trust deed—the debtor, the lender, and the trustee, to whom the property is conveyed, as security for the accompanying promissory note of indebtedness. The note is a direct obligation from the debtor to the creditor. The primary difference between a trust deed and a mortgage is in the method of foreclosure. Upon payment of the debt, the lender, who is also known as the Beneficiary, completes a form, "Request for Full Reconveyance," the cancelled note and other instruments relating to the loan transaction. In the deed of trust, the parties are: (1) the Trustor, who is the debtor-owner, who conveys the subject premises by a Trust Deed, as security for the payment of the debt; (2) the Beneficiary, who advances the money (creditor), for whose benefit the Deed of Trust is executed; (3) the Trustee—a third person, to whom the "naked" legal title to the real estate is transferred by the Deed of Trust. In form, the Deed of Trust resembles the warranty deed to the extent that it contains such operative or granting words as "grant, bargain, sell and convey" with the limitation "to the Trustee, in trust, with power to sell," in event of a default or breach by the grantor (debtor), to reconvey the premises to the party entitled thereto. The grantor (owner), who has borrowed the money, also executes a promissory note in the amount of the debt. The note is evidence of the debt and the deed of trust (mortgage) is security for the debt.

Upon the grantor's failure to comply with the terms of his indebtedness, the Trustee may foreclose the mortgaged property by newspaper advertisement and sale, following the prescribed statutory requirements, such as 120 days of notice of default (may vary in different states), before the sale takes place.

The proceeds of a Trustee sale are first applied to the expenses of the sale, to the obligation secured by the Trust Deed, other liens of record; and the balance, if any, to the original grantor or the owner at the time of the foreclosure.

If the mortgage debt is paid off at or before maturity, the debtor-grantor will ask for a "Request of Reconveyance." This is an authorization by the beneficiary (creditor) to the Trustee to reconvey to the grantor, or other parties entitled thereto (a purchaser from the grantor). The Trustee then makes the necessary reconveyance, and the deed is recorded. A lending institution, such as a savings and loan association, a bank authorized to conduct a trust business, title insurance or abstract company is usually selected as the Trustee.

The chief advantage to the lender is the short period necessary for foreclosure. This is important since it is an incentive to an out-of-state lending institution to make funds available for financing in that particular state. Availability of considerable funds, obviously, is a benefit to the borrower. The procedure under the Trust Deed also protects the debtor against the possibility of a deficiency judgment, and the right to cure a default at any time prior to the sale, by making the indebtedness current.

Where note secured by trust deed contained provision that if default was made in any installments, holder could declare all indebtedness due on default in any payment: *Long v. Manning*, 455 S.W. 2d 496 (Mo. 1970).

In some estates, as in Alabama and Florida, a seller has a vendor's lien for the balance of the unpaid purchase price. A vendor's lien is the right of the seller to subject the land as security for the unpaid purchase price. The lien may be enforced by a bill in equity to sell the property for the amount due. It is not good against subsequent creditors or purchasers, unless they have actual notice of it, or reference to the lien is contained in the recorded deed from seller to buyer.

Parties

There are essentially two parties in a mortgage transaction: the *mortgagor*, who is the borrower and the owner of the property and who executes a mortgage upon the property as security for payment of his debt; and the *mortgagee*, who is the lender of the money and the creditor, who receives the mortgage.

In many states, the obligor also executes a judgment note (cognovit note), in the amount of the indebtedness, as evidence of the obligation. Upon default, the creditor-mortgagee proceeds to obtain judgment on the note and then forecloses the mortgaged property, at sheriff's sale, to obtain satisfaction on the judgment. Should the mortgagor die, judgment could not be entered upon the note, but the property could be sold through court proceedings upon the mortgage.

A mortgage is a contract and the law of contracts is generally applicable. The same care urged in the preparation of a deed should also be exercised in the case of a mortgage. The mortgage instrument is comprised of two parts, the conveyance of the property and the defeasance. The latter clause provides that if the debt is repaid and the other covenants are performed by the mortgagor, then the conveyance to the mortgagee shall be null and void.

The existence of a mortgage does not prevent the property from being sold by the debtor-owner; he does not have to obtain the consent of the mortgagee-creditor. The mortgagee can look to the property as security for the debt no matter who owns it, so long as the debt remains unpaid.

However, the mortgage instrument may provide that upon the sale of the mortgaged premises, the mortgage debt shall, thereupon, become due and payable. The purchaser of land encumbered by a mortgage is called the *terre tenant* in a foreclosure proceedings.

Acknowledgment

It is necessary for the mortgage to be acknowledged by the mortgagor, and, like a deed, it should be recorded immediately by the mortgagee.

In the case of *Insurance Co. of America v. Holliday*, 214 N.W. 2d 273 (Neb. 1974), a mortgage was executed and acknowledged by only one of three owners of the real estate. It was signed by a second owner, but not acknowledged. The court held that it was entitled to be recorded.

Liability of purchaser of land

What liability does the purchaser of the mortgaged premises assume? Liability depends upon the type of clause used in the deed to refer to the mortgage. The clause used is a "short" or "long" form and liability differs accordingly.

Short- and long-form mortgage clause

As stated previously, the short-form clause is usually as follows: "Under and subject, nevertheless, to a certain mortgage in the present unpaid amount of \$5,000.00, given by John Steele, the grantor herein to the City National Bank, dated June 16, 1971 and of record in the Recorder's Office of Piedmont County in Mortgage Book

Vol. 2117, Page 316." The long-form mortgage clause reads exactly the same, with this addition: "which mortgage, the grantee expressly assumes and agrees to pay as part of the consideration herein." It must be remembered that the property is always liable for the debt. But it frequently happens, particularly in times of depressed real estate values, that the property value at a foreclosure sale is less than the mortgage indebtedness.

Deficiency judgment

During the depression years, 1931-1938, the mortgagee was entitled to a deficiency judgment for the difference between the sale price at the foreclosure sale and the mortgage debt. Very often the property was sold to the plaintiff mortgagee at a nominal price (costs and taxes) as there were no other bidders and the deficiency judgment was considerable.

The legislatures and courts, motivated by a social consciousness, recognizing the unfairness of this situation that permitted a mortgagee to acquire the property *and* to obtain a judgment for practically the entire debt as well, decreed that a debtor should have credit for the fair value of the property at the date of the foreclosure sale as an offset to the debt. Thus, today, if the property is sold to the plaintiff mortgagee for a nominal bid, the debtor would be liable only if the amount of the debt were in excess of the fair value of the property. But the possibility of a deficiency judgment, in *some* amount, is still very real. The mortgagee can look to the original owner for this deficiency, no matter through how many hands the property may have passed, because the original owner (mortgagor) is liable upon his contract obligation to repay the debt. Under the short-form clause the mortgagee has no right of action against the purchaser of the mortgaged premises, as there is no privity of contract, i.e., relationship, between the mortgagee and the purchaser of the property. The only way the original mortgagor could be relieved of all personal liability would be for him to insist that his purchaser do his own financing and have the original mortgage paid off and satisfied and the accompanying note returned and cancelled. If the original mortgagor actually pays the judgment entered against him by the mortgagee, he would have the right of *indemnification* against his purchaser, but not otherwise. Under the long-form clause, the mortgagee is considered a third party or creditor beneficiary under the deed contract between the owner and purchaser and would have a right to sue the purchaser of the mortgaged premises for the deficiency, proceed against the original debtor, or both. The principle of law has been stated to be: "where the contract is purely one of indemnity, the indemnitee [seller] cannot recover until he has suffered actual loss or damage; the mere incurring of liability gives him no such right; but where the contract is to protect against liability, the indemnitee may recover as soon as his liability has become fixed and established even though he has sustained no actual loss or damage at the time he seeks to recover."¹ Where the buyer takes over an existing mortgage, the protection of the seller requires the use of the long-form clause in the deed. Since the deed is the formal consummation of an agreement of sale previously entered into, it behooves the broker or attorney preparing the agreement of sale to exercise adequate care in drawing the mortgage clause in the sales agreement.

Industrial property mortgage

In the case of industrial property the mortgage covers not only the real estate but the fixtures and equipment contained therein. It will also cover under its lien such machinery—fixtures and equipment added subsequent to the execution of the

¹ American and English Encyclopedia of Law, 2nd Edition, p. 178.

mortgage—as is necessary to the functioning of the complete plant. The fact that the additional equipment is installed long after the mortgage was given will not prevent its becoming additional security for the benefit of the mortgagee.

Blanket mortgage

Where a mortgage is given to include more than one parcel of real estate, the mortgagee cannot be required to release any one parcel from his *blanket* mortgage upon the payment of a prorata share of the mortgage debt. The contention that the remaining property is ample security is unavailing. The mortgagee is entitled to payment of the mortgage in full and to have all the properties as security until that time.

Release and postponement distinguished

Where a property is released from the lien of a mortgage, the rights of the creditor are forever barred insofar as the tract of land which he has released is concerned.

It is preferable for such creditor to postpone the lien of his judgment, rather than release it. Suppose “A” has a judgment for \$1,000 against “B,” who owns three tracts of land. “A’s” judgment is a lien against all three tracts. “B” desires to build on tract No. 3 and requires a \$10,000 mortgage. A bank will be unwilling to make the loan since its mortgage will not be a first lien. Thus, “B” may persuade “A” to postpone the lien of his judgment in favor of the bank’s first mortgage as to tract No. 3. “A” may have ample security as tracts 1 and 2 are still subject to his lien. Or, “A” may require that “B” pay him a partial payment on his \$1,000 judgment for the accommodation.

Closed and open mortgages

A mortgagee cannot be required, in the absence of a condition to the contrary, to accept payment of the indebtedness before the maturity date. Thus, a “closed” mortgage is one which cannot be paid off before maturity (e.g., “payable at the expiration of five years from the date hereof”). The mortgagee can accept payment before maturity only if he is so inclined. Some lending institutions will accept prepayment upon payment of a premium. Mortgagees insured under the Federal Housing Act require one per cent of the original mortgage debt as a premium if the purchaser pays off the mortgage debt with borrowed funds. An open mortgage is one which is payable “within” a certain time (within five years from the date hereof) and can be paid off at any time. Building and Loan Associations will usually permit payment of the debt at any time.

Rights of mortgagor

The rights of the mortgagor and mortgagee depend, in the main, upon the provisions of the mortgage contract. Even under the conveyance theory of mortgages, the mortgagor is regarded as the real owner of the premises. As such, he has certain fundamental rights in the property. The most important right is that of possession and the accompanying right to sell the property subject to the mortgage. He may lease the premises and is entitled to the rents, profit, and revenue arising from the property. He may dispose of the property by will, subject to the mortgage. Where the mortgagee has taken possession, the mortgagor is entitled to an accounting during his stewardship.

Rights of mortgagee

Usually the mortgagee is not entitled to possession so that his rights in the property are few. He is entitled to payment of interest and installments of principal as they become due.

Mortgagee in possession

Where the property is income-producing, the creditor may, upon default, exercise his right of *mortgagee in possession*. This is accomplished simply by notifying the tenants in possession that the mortgage is in default and demanding payment of future rents to the mortgagee. A tenant will be protected against any claim of his lessor-owner by payment to the mortgagee. If the lease antedates the mortgage, the mortgagee, in those states subscribing to the conveyance theory of a mortgage, can compel the tenant to pay future rents to the mortgagee and upon the tenant's refusal can issue a landlord's levy to collect the rent. Upon subsequent foreclosure of the property, the purchaser at the sale takes the property subject to the prior lease. If the mortgage antedates the lease, the tenant cannot be compelled to pay rent to the mortgagee, but if he does so (attorns), he must continue to pay rent during the mortgagee's tenure in possession. Should the tenant refuse the mortgagee's demand for rent, the latter's only recourse would be to foreclose the property and thereby terminate the lease. Even if the lessee attorns to the mortgagee, the plaintiff mortgagee, upon foreclosure at a later date, could nevertheless void the lease. His status as a mortgagee in possession is separate and independent from his status as owner as a result of the foreclosure proceedings.

The duty of a mortgagee in possession is that of a provident owner. This means responsibility for management and preservation of property: *Essex Cleaning Contractors, Inc. v. Amato*, 317 A. 2d 411 (N.J. 1974).

A mortgagee in possession may also become liable for damages to a person injured on or about the mortgaged premises. If the mortgagee takes over such control and dominion of the property as to supplant the owner, then he also assumes tort liability to third persons. Mere receipt of rentals is insufficient, but actual control and possession are necessary to make a mortgagee liable. Courts in Kentucky, New York, and Pennsylvania have so held. "Actual control and possession" means collecting rents, negotiating leases, paying taxes, and authorizing necessary repairs. In short, it is necessary to establish that the mortgagee exercised those acts of dominion over the property which any owner of a similar property would do under the circumstances.²

Assignment of mortgage

Just as the mortgagor-owner can sell the premises subject to the mortgage, so the mortgagee can sell the mortgage. This is effected by assignment. The purchaser of the mortgage, the *assignee*, acquires the same title and interest in the mortgage which his *assignor* had, but no better title. An assignee is said to stand in the shoes of his assignor. Any claim, demand, or setoff which the mortgagor had against the mortgagee he can set up with equal facility against the mortgagee's assignee. Thus, if the mortgagor had paid the mortgagee \$1,000 upon a \$5,000 mortgage debt, which mortgage the mortgagee had sold to his assignee for \$5,000, the mortgage purchaser could recover only \$4,000 from the debtor.

² *Miner's Saving Bank v. Thomas*, 140 Pa. Super Ct. 5 (1940).

Certificate of no defense, declaration of no setoff, estoppel certificate

In order to protect himself against this possibility the purchaser should obtain a statement from the mortgagor acknowledging the indebtedness due. This is known as a Certificate of No Defense, an Estoppel Certificate, or a Declaration of No Set-off, by which the mortgagor admits that he owes the debt and must pay it in full at maturity. The Certificate or Declaration also serves notice and acknowledgment of notice upon the debtor of the transfer of the mortgage. Otherwise, he would be protected in continuing payments to the original creditor. The assignee of a mortgage should also require the mortgagee to turn over to him the mortgage instrument, the accompanying note, fire insurance policy, and any other papers relating to the mortgage transaction. The mortgagee should acknowledge upon the margin of the recorded mortgage the transfer to the purchaser or execute and record an assignment. The original mortgagor can compel the mortgagee to assign the mortgage to him upon tender to the creditor of the mortgage debt. It may be expeditious to make such a tender in order to avoid the possibility of a judgment deficiency in the future.

Particularly so, if a depression should ensue, and property values diminish considerably.

Voluntary deed

It frequently happens that a mortgagor, in order to avoid foreclosure and the possibility of a deficiency judgment against him, will agree to convey the property voluntarily to the mortgagee in settlement and satisfaction of the mortgage. It is important that the deed recite that the conveyance is *intended* as a satisfaction of the debt, as the deed, per se (by itself) will not have that effect. The debtor should insist that the mortgagee satisfy the mortgage of record and return the mortgage and any other evidence of the debt to him. The mortgagee, in accepting a voluntary deed for the property, should have the records examined to make sure that he is acquiring the property free and clear of any judgments or liens. Under a voluntary conveyance, the mortgagee would acquire no better title than the mortgagor had, whereas through foreclosure proceedings, he could divest liens and judgments entered of record subsequent to his mortgage.

Sheriff's foreclosure

Upon default in any of the mortgage terms the creditor is entitled to institute foreclosure proceedings against the mortgaged property. At the public sale, the property is sold by the sheriff to the highest bidder. The deed is executed by the sheriff and gives no assurance or guarantee as to the validity of the title. The equity of the debtor is effectively wiped out. If the property brings an amount in excess of the debt, and there are no other liens to be paid, the mortgagor is entitled to the excess fund. Where a Deed of Trust is used, the instrument prescribes the procedure for sale of the mortgaged property.

Payment and satisfaction

A mortgage is usually terminated by payment and satisfaction. Where the debtor tenders payment of the debt, he is entitled to have the mortgage marked "Satisfied in full" of record and the mortgage papers returned to him. The mortgagee can personally satisfy the mortgage of record or he may do so by executing a *Satisfaction Piece*, which is a separate instrument, and duly recording it to show that the debt has been paid. After 20 years a mortgage is *presumed* to be paid and the bur-

den of proving otherwise is upon the mortgagee. Where an old mortgage is of record and no payment or demand for payment has been made for more than 20 years, a party in interest can petition the court for an order satisfying the mortgage of record.

Chattel mortgages

There has been some activity for a "package mortgage," which will include not only the real estate but also the refrigerator, laundry equipment, furniture, and even the family car. Most states provide for mortgaging of personal property by a chattel mortgage, which is generally used to finance the purchase price of furniture, household appliances, and commercial equipment. The chattel mortgage is recorded. Title is transferred to the purchaser, and he in turn can convey title to the article in question to a new buyer, but the title is subject to the balance due under the chattel mortgage. In an examination of the title of real estate, search should also be made for chattel mortgages. A chattel mortgage differs from a conditional sale in that, while possession passes in both cases to the buyer, title, in a conditional sale, remains in the seller until the last installment is made.

Acceleration of debt

High interest rates present a problem for an owner of mortgaged premises to sell the property, contingent upon the buyer's assuming and agreeing to pay the mortgage. For example, if the owner had mortgaged his property in 1970, at a mortgage rate of six per cent, and the owner desires to sell his property in 1978, it is clearly apparent that it would be to the buyer's advantage to assume the mortgage, since mortgage interest rates in 1978 are eight per cent to nine and one-half per cent. To offset this possibility, many mortgages in recent years include a clause to the effect that if the mortgagor (owner) should sell the property without first obtaining consent from the mortgagee, the entire principal debt should become immediately due and payable at the option of the mortgagee. In the case of *Gunther v. White*, 489 S.W. 2d 529 (Tenn. 1973), the mortgagor alleged that the acceleration clause was an illegal restraint on his right of alienation to sell his land upon his best possible terms. The court held the acceleration clause valid: *Crockett v. First Federal Savings and Loan Association of Charlotte*, 224 S.E. 2d 580 (N.C. 1976).

In an earlier case of *Peoples Savings Association v. Standard Industries, Inc.*, 257 N.E. 2d 35 (1970), the Ohio Court of Appeals held that the "due-on-sale" clause of acceleration was not illegal, inequitable or contrary to public policy.

Somewhat different is the California case of *La Sala v. American Savings and Loan Association*, 489 P. 2d 1113 (1971). The mortgage, in addition to the acceleration clause, also included a restriction against encumbering the property. In this case, the mortgagor gave a second mortgage on the property and the mortgagee claimed there was a default and the debt could be accelerated to the full amount. The Appellate Court held that the subject clause was not an illegal restraint upon alienation. *Mutual Federal Savings and Loan Association v. Wisconsin Wire Works*, 239 N.W. 2d 20 (Wis. 1976).

In *Miller v. Pacific Federal Savings and Loan Association*, 86 Wash. 2d 401 (Wis. 1976), the Court held that a mortgage clause, permitting the mortgagee to increase the interest rate upon transfer of the mortgaged property, was not invalid.

In the case of *Demey et al v. Jonjon Roche et al*, App. 133 Cal. Rptr. 570 (1976), the Court held that where there was a proposed resale, with essential elements of a

land contract, an attempt to enforce the "due on sale" acceleration clause in deed of trust was illegal and improper.

"Due on sale" provisions are justified because such a provision is necessary to a lender's security, as well as on the basis of sound economics: *Medovoi v. American Savings and Loan Ass'n.*, 133 Cal. Rptr. 63 (1976). Where an agreement for deed failed to mention an acceleration of debt upon default in making monthly payments, default did not warrant acceleration of debt: *Adkinson v. Nybert*, 344 So. 2d 614 (Fla. App. 1977). In the case of *Tucker v. Lassen Savings and Loan Ass'n.*, 526 P. 2d 1169 (Cal. 1974), the Supreme Court held that a "due-on sale" clause could not be automatically invoked, accelerating the debt, when the mortgagor-owner sold the mortgaged property on an *installment land contract*. However, in *Medovoi v. American Savings and Loan Ass'n.*, 133 Cal. Rptr. 631 (1976), the appellate court held otherwise.

Even though the motive of the mortgagee may be only to secure an increase in the rate of interest, this is not fatal to the exercise of an acceleration clause in the mortgage: *Century Federal Savings and Loan Ass'n. v. Van Glaun*, 364 A. 2d 558 (N.J. 1976).

In the case of *J. M. Realty Investment Corp. et al. v. Stern*, 296 So. 2d 588 (Fla. App. 1974), the appellate court held that the mortgagee-vendor could foreclose for entire balance due, including amount due on first mortgage, where the wrap-around mortgage included balance due mortgagee, as vendor of subject property, as well as balance owned on first mortgage. Mortgagor's default in making payments as required by wrap-around mortgage entitled mortgagee to do so.

Questions on Mortgages

1. Q. Why does a borrower execute a note when he executes a mortgage?
A. The note is evidence of the debt and expedites the entry of judgment (by confession) in case of default.
2. Q. Is the consent of the mortgagee necessary in order for the debtor-owner to sell his property?
A. The mortgage instrument may make such consent necessary and is frequently used.
3. Q. What two theories are there in regard to mortgages?
A. In some states, a mortgage is a conveyance of real estate; in other states, it is considered merely a lien, similar to a judgment.
4. Q. Do all commercial banks belong to an association which promulgates rules for lending money on mortgages?
A. No.
5. Q. Why does a broker render a disservice to his owner when he stresses to the buyer that there is a mortgage on the property, which the buyer can assume, so that the buyer will not have to do any financing?
A. Because the owner will continue potentially liable on the mortgage as long as it is unpaid.
6. Q. What is the difference between a first and second mortgage?
A. A first mortgage is the one which is first recorded and has priority in distribution of funds at a foreclosure sale. A second mortgage is subordinate to a first mortgage.
7. Q. What is the difference between an open mortgage and a closed mortgage?
A. An open mortgage can be paid off at any time before the maturity date while a closed mortgage cannot be paid off before the expiration date unless the mortgagee is willing to accept payment.
8. Q. Who are the parties to a mortgage?
A. The mortgagor, who owns the property and borrows money upon the security of the property, and the mortgagee, who lends the money. The mortgage is executed by the mortgagor in favor of the mortgagee.
9. Q. What economic functions do mortgages serve?
A. Mortgage credit has made possible the wider distribution of home ownership and the promotion of the economic, social, and financial welfare of the community.
10. Q. Name six sources of mortgage funds.
A. Individuals, banks, insurance companies, savings and loan associations, endowment funds, Federal farm loan system.
11. Q. What is a junior mortgage?
A. A mortgage in which the lender's claims against the owner's rights are subordinate to the claim of the first mortgage holder or to other liens.
12. Q. What additional security does a borrower give in addition to the mortgage proper?
A. A note undertaking to repay the debt as specified and a warrant of attorney authorizing an attorney at law to appear for and confess judgment against the debtor in event of default.
13. Q. Can a minor mortgage real estate owned by him?
A. Yes, but the mortgage could be disaffirmed by the infant during his minority or

within a reasonable time after attaining his majority. The creditor should deal only with the legally appointed guardian of the minor. A minor's warrant of attorney to confess judgment is void.

14. Q. What is a deed of trust ?
A. A written instrument, signed, sealed and acknowledged wherein a property owner pledges his property as security for a debt by conveying title to one or more trustees for the purpose named in the deed of trust.
15. Q. What are two functions of trustees named in a deed of trust ?
A. To foreclose in case of default under any of the terms of the deed of trust and to release the property upon payment or satisfaction of the debt.
16. Q. How many trustees are required to be named in a deed of trust ?
A. One or more. Sometimes a corporation is used as a single trustee. When individuals are used as trustees, generally two are named.
17. Q. How could a property be foreclosed or released under the terms of a deed of trust in which two trustees are named:
(a) in the event of the death of one of the trustees?
(b) in the event of the death of both trustees?
(c) in the event of refusal of one or both trustees to act ?
A. (a) The surviving trustee could act.
(b) Petition the court for the appointment of a substitute trustee or trustees.
(c) Same as (b).
18. Q. What is meant by "first deed of trust" and "second deed of trust" ?
A. The distinction is merely the order in which they have been recorded. The one recorded first is the first deed of trust, and the one recorded next is the second deed of trust, and the priority of lien is thus established.
19. Q. What is a "deferred purchase money" deed of trust ?
A. A deed of trust pledging real estate as security for the payment of that part of the purchase price which has been deferred.
20. Q. Can a corporation execute a mortgage?
A. Yes, if in the ordinary course of its business, but not for the purpose of increasing its indebtedness.
21. Q. Does a married woman have power to execute a mortgage on real estate owned by her?
A. Generally a married woman can. In some states, she cannot unless she has been declared a feme sole trader.
22. Q. What is meant by the debtor's "equity of redemption" ?
A. A period of grace, *after default*, in which the debtor may redeem his property, provided it has not been foreclosed. Equity of redemption should not be confused with right of redemption which is the right the debtor has to redeem property after it has been sold for taxes.
23. Q. What indicia determine that an instrument is a mortgage rather than a conditional sale?
A. 1. The fact that the transaction originated in an application for a loan of money.
2. The fact that the grantor retained possession.
3. The fact that grantor continued to pay taxes and made repairs and improvements.
4. Gross inadequacy of price.
24. Q. Johnson has a mortgage on three contiguous tracts of equal value owned by Lee. The mortgage is for \$9,000. Lee desires to sell one tract for \$5,000 and asks Johnson to release the tract upon payment of \$3,000. Johnson refuses. Can Lee compel Johnson to release the tract in question?
A. No. Johnson has a "blanket mortgage" upon the three parcels and is entitled to the full security until the debt is paid. If he doesn't choose to accept a partial payment and release the tract, he cannot be compelled to do so.
25. Q. What rights does the mortgagor have?

- A. 1. The right of possession.
 - 2. The right to lease, deed, or will the property subject to the mortgage.
 - 3. The right to an accounting if the mortgagee is in possession.
26. Q. What are the rights of the mortgagee?
- A. 1. Right to interest and principal as due.
 - 2. Right to prevent the mortgagor from committing waste so as to lessen the mortgagee's security.
 - 3. Right to possession in case of a default.
27. Q. What is meant by amortization of a mortgage?
- A. Liquidation of the debt through regular periodic payments.
28. Q. What is the purpose of the Federal Farm Loan Act and how does it operate?
- A. It provides capital for agricultural development. First mortgage loans only are made. Amount of loan limited to 85% of appraisal; proceeds must be used to pay off an existing indebtedness or in farm production; debt is payable in monthly, annual or semiannual installments of principal and interest; mortgage term is from 5 to 40 years; rate of interest is not limited. Loan amount varies from \$100 upward.
29. Q. Saunders owned certain premises subject to a mortgage to Thurston for \$8,000. Saunders leased the premises to Stevens for 10 years. Later Saunders desired to obtain possession of the premises. He purchased the mortgage from Thurston in the name of Smith and foreclosed the property. Smith then notified Stevens to vacate. Who will win?
- A. The tenant, Stevens, will win. Since Saunders is the lessor, he cannot commit any act to interfere with the tenant's quiet and peaceful enjoyment of the premises.
30. Q. What is an F.H.A. mortgage as the term is commonly used?
- A. A loan that is guaranteed to the mortgagee-lending institution by the Federal Housing Administration.
31. Q. What is meant by an acceleration clause in either a mortgage or contract?
- A. A clause giving the mortgagor or vendee the right to pay more than the regular payments or to pay the mortgage or contract in full at any time. It is also used to indicate that a mortgagee can accelerate the balance due under a mortgage or lease immediately after any default.
32. Q. What is a chattel mortgage?
- A. A mortgage upon personal property such as livestock, equipment, or fixtures. It must be recorded.
33. Q. What is the difference between a note and a mortgage?
- A. A note is the evidence of indebtedness and the promise to repay; a mortgage is a pledge of specific realty as a security.
34. Q. If there is a discrepancy between the note and mortgage as to the amount of the debt of the time of its repayment, which will prevail?
- A. The note.
35. Q. Does the purchaser assume personal liability for the mortgage debt?
- A. It depends upon the mortgage clause in the deed. If the purchaser buys the property "under and subject to the mortgage," he assumes no personal liability. If he buys "under and subject to the mortgage, which he assumes and agrees to pay," he is personally liable for the payment of the mortgage debt.
36. Q. Ross executes a deed to Bonfield, "under and subject to the payment of a certain mortgage for \$5,000 in favor of the First National Bank, dated January 3, 1971 and of record in the Recorder of Deeds' Office of Harkins County in Mortgage Book Vol. 2117, page 360." On June 1, 1977, the bank forecloses and the property is sold at the sheriff's sale for \$4,100. What are the respective liabilities of Ross and Bonfield to the bank?
- A. Ross is liable for any deficiency judgment to the bank. Bonfield is not liable to the bank, because he did not assume and agree to pay the debt. If Ross is required to pay the judgment to the bank, he, in turn, would be entitled to indemnification from Bonfield.

37. Q. Given the preceding facts, if Bonfield signed an extension agreement with the bank extending the term beyond the maturity date and agreeing to make the payments, what liability would ensue?
 - A. The bank could hold Ross or Bonfield for the deficiency because there is now privity of contract between Bonfield and the bank. Ross remains liable so long as the debt is unpaid.
38. Q. Who pays the premium on an insurance policy with a mortgage clause?
 - A. The mortgagor, to protect the mortgagee to the extent of his interest, in case the mortgaged premises are destroyed or damaged by fire or other casualty.
39. Q. Why is it important that a deed of release be promptly recorded after the debt has been paid or satisfied?
 - A. To guard against carelessness or accident which might result in loss of the cancelled note, which loss would cause serious consequences.
40. Q. Adams purchased a tract of land from Baker. The property is encumbered by a past due mortgage, which Baker gave Conway when Baker purchased the property from Conway. Conway is willing and does extend the mortgage for another period of five years.
 1. Should the extension of mortgage be entered into between Adams, the new owner, and Conway, the mortgagee, or should the extension agreement be signed by Baker and Conway?
 2. After the extension of mortgage is signed by Conway, is Baker relieved of his obligation as the maker of the original mortgage?
 3. What liability, if any, does Adams, the new purchaser, now have in connection with the mortgage?
 - A.
 1. Adams and Conway, since Adams is now the owner of record of the property.
 2. No. Baker is still responsible for conditions of the mortgage as of the date of the extension.
 3. Adams, the new owner, is responsible for any new condition which may arise after the extension of the mortgage.
41. Q. What is the function of the Federal Housing Administration in the mortgage loan field?
 - A. It insures loans that are made by F.H.A. approved lending agencies.
42. Q. What is a reduction certificate?
 - A. A certificate showing the balance due on a mortgage at the time of closing a sale.
43. Q. Ogden, a real estate broker, is employed by Whitney, a mortgagee, to collect interest on a mortgage due him from Crane, the mortgagor. Ogden collects the interest payments for three years and remits to Whitney, deducting a commission for his services. In 1978 Crane pays the mortgage debt of \$4,000 to Ogden, who uses the money for his own purposes. Ogden dies two months later and his estate is hopelessly insolvent. In a contest between Whitney and Crane, who will suffer the loss?
 - A. The loss falls upon the mortgagor, Crane, for Ogden had no authority to collect the principal, and the responsibility was upon Crane to ascertain the extent of the agent's authority.
44. Q. Where a mortgagor makes extensive improvements to the property, can he set off the cost against the mortgage debt in case of a foreclosure?
 - A. No. All improvements become part of the freehold and go to increase the mortgagee's security for the debt.
45. Q. Is a mortgage assignable?
 - A. Yes, but the purchaser gets no better title or claim than the mortgagee had.
46. Q. What steps should the purchaser take or require in purchasing a mortgage?
 - A.
 1. Transfer of mortgage and other papers to him.
 2. Note the assignment upon the record.
 3. Obtain a declaration of no setoff, estoppel certificate, or certificate of no defense from the mortgagor.
47. Q. Green executed a mortgage to Brown in 1971. Green leased the property to White

for 5 years from May 1, 1976. Green failed to pay taxes or interest on the mortgage in 1978, and Brown notified White to pay the rents to him. White did so, and Green instituted an action for the rent against White. Will Green win?

- A. No. White is protected in paying the rent to Brown, who, upon Green's default, can exercise his right of mortgagee in possession. White may attorn to Brown; that is, recognize Brown as his lessor.
48. Q. Given the same facts, suppose White refused to honor Brown's request for rent but continued his rent payments to Green. What redress does Brown have?
- A. Brown cannot compel White to pay the rent; he would have to foreclose the property and obtain title, in which case he could then terminate White's lease.
49. Q. Suppose, given the preceding facts, that White paid the rent to Brown for a period of seven months and then Brown foreclosed the property and obtained title to it. Brown now notifies White that his lease is terminated. Can Brown do so?
- A. Yes. Although Brown recognized the lease previously by accepting rent payments from White, he is not estopped from cancelling the lease after he becomes owner of the property. Brown's status as a mortgagee in possession is entirely different and apart from his rights as owner after foreclosure. This is true where the mortgage antedated the lease, as here.
50. Q. Is a valid oral lease assignable?
- A. Yes, but not desirable.
51. Q. Mitchell exercises his rights as a mortgagee in possession under a mortgage from Adler. Mitchell collects the rents from the six tenants, pays the taxes, makes necessary repairs, and generally exercises dominion over the property. A pedestrian is injured due to a defective sidewalk and sues Adler, who brings in Mitchell as an additional defendant. Is Mitchell liable?
- A. Yes. The mortgagee in possession assumes the status of an owner when he exercises control, direction, and dominion over the property.
52. Q. What is the purpose of a "mortgagee clause" attached to a fire insurance policy?
- A. To protect the mortgagee against destruction of the mortgaged premises, as the mortgagee's interest may appear. The insurance policy is kept by the mortgagee and a policy certificate is furnished the owner. The mortgagor pays the insurance premiums.
53. Q. Can a mortgagee accept a voluntary deed from mortgagor in lieu of foreclosure?
- A. Yes, but the mortgagee should make certain that there are no liens or encumbrances entered subsequent to his mortgage as he will take the property subject to them.
54. Q. When a mortgagee has made two assignments of the mortgage, which assignment will take effect?
- A. The first assignment will prevail. However, in the assignment of a specialty such as a mortgage, transfer of the instrument itself is the controlling factor in determining ownership of the mortgage.
55. Q. What should be done when the mortgage is paid off?
- A. The mortgagee should acknowledge payment and satisfaction upon the record or execute a satisfaction piece and record it. The mortgagor should require the return of all the mortgage papers executed by him and the fire insurance policy.
56. Q. What is a mortgagee's remedy for the failure of the mortgagor to pay interest upon the principal of the mortgage debt as agreed?
- A. If the property is revenue-producing, he can step in as mortgagee in possession and require the tenants to pay him the rent; or he can foreclose the property and sell it for his debt.
57. Q. A property on which there is a first mortgage of \$4,000, a second mortgage of \$4,000 and a third mortgage of \$2,000, is sold under foreclosure, bringing a price of \$5,000. What sum of money would each mortgagee receive if sold by first mortgagee?
- A. The first mortgagee would receive \$4,000; the second mortgagee, \$1,000; and the

third mortgagee, nothing. The purchaser at the foreclosure sale would receive the property clear of the three mortgages.

58. Q. What is the name of the clause inserted in a contract when it is desired by the purchaser of real property to place a mortgage at a later date on the property to take precedence over a purchase money mortgage given at the time of purchase?
- A. A subordination clause.
59. Q. Who executes a "Certificate of No Defense" or an "Estoppel Certificate" relating to a mortgage? For what purpose is it asked?
- A. By the mortgagor. It is asked when the mortgagee sells or assigns the mortgage so that the purchaser will have the mortgagor's assurance that the debt is owing and unpaid.
60. Q. Who executes the deed to real property when it is sold by the court in an action to foreclose a mortgage?
- A. The sheriff.
61. Q. Archer executes a mortgage to Hood for \$5,000. Later Hood purchases merchandise from Archer for \$750 and agrees to permit Archer to set the amount off against the mortgage debt. Subsequently Hood sells the mortgage to Cox. At maturity Archer refuses to pay more than \$4,250 on the principal. How much can Cox collect?
- A. Only \$4,250 as Cox received no better title to the mortgage than Hood had. Cox should have obtained an Estoppel Certificate or Certificate of No Defense from Archer when he purchased the mortgage, to ascertain the amount due.
62. Q. Ash obtained a mortgage from the Peerless Mortgage Co. for \$6,000. On the same day, the Peerless Mortgage Co. assigns the mortgage to the Traders' Bank, and Ash executes an Estoppel Certificate (same as a Certificate of No Defense or a Declaration of No Setoff). Later the Traders' Bank assigns the mortgage to the Rex Tile Co. for value. At maturity Ash refuses to pay more than \$5,250, claiming that he has made payments of \$750 to the Traders' Bank. If Ash can establish this fact, how much can the Rex Tile Co. collect?
- A. Only \$5,250. The tile company should have obtained a *new* estoppel certificate when it purchased the mortgage from the bank.
63. Q. A mortgage with amortization provisions and in the original sum of \$10,000 is offered for sale two years after its inception. Name two legal documents to be used in effecting a proper transfer of the mortgage to the purchaser.
- A. 1. An assignment of the mortgage by the mortgagee.
2. An Estoppel Certificate by the mortgagor.
64. Q. An owner of five parcels of real estate is seeking a mortgage loan and offers all of the five parcels as security for the loan. The owner wishes to reserve the right to repay portions of the money borrowed at stated intervals before the due date of the mortgage and upon each payment to eliminate from the mortgage one of the five parcels covered by the mortgage. What is the name of the mortgage the owner will be required to execute, and what is the name of the document the owner will require from the mortgagee to free one of the parcels upon making a payment as stated above?
- A. The mortgage is a *blanket* mortgage. The mortgagee will be required to execute a *release*.
65. Q. What is the difference between a *purchase money* mortgage and a *blanket* mortgage?
- A. A purchase money mortgage is one given by the buyer to the seller in part payment of the consideration price. A blanket mortgage is one mortgage covering a number of properties.
66. Q. If you borrow and give an F.H.A. mortgage, is the loan made by the Federal Government?
- A. No. The loan is made by a bank or other lending institution and guaranteed by the Federal Government.

67. Q. An F.H.A. mortgage is referred to as an insured mortgage. Whom does the insurance protect, the mortgagor or mortgagee?
A. The mortgagee.
68. Q. Is it necessary to record a mortgage in order to have a valid mortgage?
A. No, as between the two original parties, mortgagor and mortgagee. The mortgagee must record the mortgage in order for it to be a valid lien against the property ahead of a subsequent creditor, or in case of sale of the property by the mortgagor.
69. Q. In case of the death of the mortgagor, does the mortgage become immediately due?
A. No, the mortgage continues in accordance with its terms, if it is not delinquent and the property continues as security, no matter who inherits it.
70. Q. Does the death of the mortgagee have any effect upon the mortgage?
A. No; it passes as personal property in the estate.
71. Q. What is an "open end" mortgage?
A. The mortgagor has the right, after he had paid off part of the debt, to borrow additional funds from the mortgagee up to the original amount, at any time during the mortgage term.
72. Q. Abbott owes the Greenbacks Mortgage Co. \$14,000 on a mortgage on his home. In 1971, he sells the home to Cabot for \$17,000, and Cabot assumes and agrees to pay the mortgage. In 1972, Cabot sells the same residence to Lodge for the same price, "under and subject to the mortgage." In December 1977, Lodge sells the property to his brother-in-law, Stoner, at \$16,000 and Stoner assumes and agrees to pay the mortgage in the then amount of \$12,890. Stoner defaults, and the mortgage company realizes only \$11,200 at a foreclosure sale. Can it collect the deficiency from (a) Abbott (b) Cabot (c) Lodge (d) Stoner?
A. (a) The mortgage company can collect from Abbott upon his original obligation (note). (b) It can collect from Cabot because he assumed and agreed to pay the debt. (c) It cannot collect from Lodge, because he did not assume the debt. (d) It cannot collect from Stoner because Stoner's promise to assume and pay the debt was made to Lodge, who was not liable to the mortgage company.
73. Q. What is the main reason for a lender to require a provision in the mortgage that failure to pay the taxes when due constitutes a default of the mortgage?
A. The lien created by unpaid taxes has priority over a mortgage on the property.
74. Q. What is the difference between "recording a mortgage" and "releasing a mortgage"?
A. Recording a mortgage benefits the mortgagee in that it is public notice of the existence of the mortgage; releasing a mortgage benefits the mortgagor, because the mortgage is no longer a lien against the particular property which is released.
75. Q. What are the essentials of a mortgage upon real property?
A. (1) In writing; (2) Competent parties; (3) Purpose must be stated; (4) A mortgaging clause; (5) Description; (6) Mortgagor's covenants; (7) Signed by the mortgagor; (8) Acknowledged by the mortgagor; (9) Delivered to the mortgagee.
76. Q. What is the main difference between a mortgage and a deed of trust?
A. A mortgage usually has a one-year redemption period after default. A deed of trust can be foreclosed in 120 days, unless reduced by agreement or by statute.

True and False

(Answers to this section are on pages 704-705.)

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|--|---|---|
| 1. Recording fee for a mortgage is paid by the mortgagee. | T | F |
| 2. A government financed or approved mortgage is an F.H.A. or V.A. loan. | T | F |
| 3. The date of recording determines the priority of a mortgage. | T | F |
| 4. A lending institution cannot refuse to give a veteran a loan if the veteran has a | | |

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|---|---|---|
| certified entitlement. | T | F |
| 5. A seller must obtain a court order to sell mortgaged property. | T | F |
| 6. A minor cannot affirm his purchase of a property and disaffirm his purchase money mortgage. | T | F |
| 7. A mortgagee is concerned more with the financial responsibility of the debtor than the security of the property. | T | F |
| 8. A deed of trust is usually conveyed to a Trustee. | T | F |
| 9. An escrow account must be forfeited by the seller when the purchaser assumes his mortgage. | T | F |
| 10. Taxes have priority over recorded mortgages. | T | F |
| 11. A blanket mortgage is one upon a dwelling which has two or more bedrooms. | T | F |
| 12. The mortgagee should have possession of the Abstract of Title and fire insurance policies. | T | F |
| 13. In a joint estate, either party can execute a valid mortgage. | T | F |
| 14. There are no covenants to be found in a mortgage. | T | F |
| 15. In the sale of real property, it is more advisable to sell the property with a clause that buyer assumes the mortgage than merely "under and subject to mortgage." | T | F |
| 16. An acknowledgment is necessary on the note accompanying the mortgage. | T | F |
| 17. A veteran purchaser is not allowed to pay the V.A. appraisal fee. | T | F |
| 18. A mortgage is released upon the records by filing a deed of "reconveyance." | T | F |
| 19. It is lawful for a purchaser to give a second lien to the owner and assume the outstanding balance of an F.H.A. mortgage. | T | F |
| 20. The evidence of a personal obligation which is secured by real estate is called a mortgage. | T | F |
| 21. A deficiency judgment may be taken against the mortgagor in the foreclosure of a purchase money mortgage. | T | F |
| 22. A chattel mortgage is used to borrow money on farm lands. | T | F |
| 23. When a mortgage is overdue, and it is the desire of the owner to negotiate the continuance of the mortgage to a later date, he negotiates an extension agreement. | T | F |
| 24. A mortgagor is the party who has loaned money on real property. | T | F |
| 25. The word "amortization" as applied to a mortgage or deed of trust means a reduction of the debt which they may secure by the payments of regular installments. | T | F |
| 26. An F.H.A. loan on real estate means that the Government of the United States has made a direct advance of money to the owner and has taken a mortgage or deed of trust as security. | T | F |
| 27. A mortgage is a lien on specific real estate. | T | F |
| 28. There is no difference between a purchase money mortgage and one given to secure a loan. | T | F |
| 29. A mortgage is personal property. | T | F |
| 30. Usury means charging more than the legal rate of interest. | T | F |
| 31. A mortgage on personal property is called a chattel mortgage. | T | F |
| 32. F.H.A. loans are never made for more than 60% of the appraised valuation of the property. | T | F |
| 33. An open mortgage is one upon vacant land. | T | F |
| 34. A mortgage terminates an existing lease on the property. | T | F |
| 35. A construction mortgage is one for a limited period of time. | T | F |
| 36. An F.H.A. loan is the same as a V.A. loan. | T | F |
| 37. In an estate by the entireties, either husband or wife can execute a valid mortgage. | T | F |
| 38. When a loan is made to a veteran, the money loaned does not come from the United States Government. | T | F |
| 39. It is possible to procure a G.I. loan to purchase livestock and equipment for a farm. | T | F |

40. It is lawful for the borrower to give a second mortgage, where there is an F.H.A. first mortgage. T F
41. It is lawful for the borrower upon an F.H.A. mortgage to give a second mortgage on the same property covered by the F.H.A. mortgage. T F
42. At the present time an F.H.A. loan may be paid off in full without penalty if it is paid from the borrower's own funds. T F
43. It is unlawful to sue on a note secured by a mortgage on real estate without first starting to foreclose the mortgage. T F
44. There is a substantial difference between buying property subject to a mortgage and buying the property and assuming a mortgage thereon. T F
45. A purchaser of property at a foreclosure sale on a mortgage receives a general warranty deed. T F
46. Where an applicant for a mortgage loan is an excellent moral risk, a higher appraised value of the real estate is permitted than if the applicant is a poor risk. T F
47. A mortgagor cannot, at foreclosure, set off against the debt the value of improvements made by him during the mortgage term. T F
48. A mortgagee is bound to accept a voluntary deed from the mortgagor in lieu of foreclosure. T F
49. In the purchase of real property, it is more advisable to buy the property subject to an existing mortgage than to assume payment of it. T F
50. A "junior mortgage" will take precedence over the first mortgage or trust deed, if no interest is paid on the first mortgage for the period of the calendar year. T F
51. The operation of paying off a mortgage by periodic payments is called the prepayment of the mortgage. T F
52. A mortgagor is bound to obtain the consent of the mortgagee before he can sell the mortgaged premises. T F
53. A mortgagee in possession must account to the mortgagor for all revenue received by him from the property. T F
54. The so-called "blanket mortgage" is one that includes attached fixtures and appliances, as well as the real estate. T F
55. A mortgage clause which permits the mortgagee to advance the maturity date of the principal is called an acceleration clause. T F
56. A chattel mortgage is used to borrow money on a right of way. T F
57. A mortgage can be transferred from one person to another. T F
58. Where a mortgagee takes over control of the mortgaged premises, he, and not the owner, is liable for injuries on the premises. T F
59. An "estoppel certificate" is the same as a "certificate of no defense." T F
60. A mortgage for more than 20 years is void. T F
61. A mortgage must be paid off before the property can be sold. T F
62. Even though a mortgaged property is sold more than 3 times, the original mortgagor continues liable upon his note, until paid off. T F
63. Where the mortgagee enters into an extension agreement with the new purchaser of the mortgaged premises, the original mortgagor is discharged from liability. T F
64. Where a purchaser of mortgaged premises "assumes and agrees to pay" the debt, he is liable to the mortgagee for full payment. T F
65. Where a purchaser of mortgaged premises "assumes and agrees to pay" the debt, the original mortgagor is no longer liable for the full debt. T F
66. An agent appointed to collect interest on a mortgage has authority to collect the principal. T F
67. An administrator of an estate has no authority to execute a mortgage upon real estate belonging to the decedent. T F
68. A clause which provides that the full mortgage debt shall become due and payable, upon a sale of the mortgaged property, is invalid. T F
69. A mortgage clause which provides that in event of a sale of the property, a

- higher named interest rate will be charged, is valid. T F
70. A person inheriting real estate subject to a mortgage must pay off the mortgage immediately. T F
71. A sound conventional loan should be for not more than two-thirds of the property value. T F
72. The Home Owners Loan Corporation gave its assistance to distressed property owners during the depression. T F
73. The mortgagor pays the fee for recording the mortgage. T F
74. A first mortgage is always a first lien. T F
75. Subordinating or postponing the lien of a mortgage is always more advantageous to the mortgagee than releasing the lien. T F
76. A minor is not permitted to own a mortgage. T F
77. The mortgagee should have possession of the fire insurance policy. T F
78. The mortgagor is required to pay the fire insurance premiums. T F
79. A "satisfaction piece" means that the mortgage has been partially paid off. T F
80. The mortgagor's "equity of redemption" is a period of grace for payment of the debt. T F
81. Any excess of funds realized at a foreclosure sale belong to the mortgagor. T F
82. A mortgage represents a liquid asset of the mortgagee. T F
83. Payment to the borrower of the money loaned under a construction loan is made when the construction of the improvements on real estate is completed. T F
84. There is no difference between a mortgage release and a mortgage satisfaction. T F
85. The obtaining, by a lender, directly or indirectly of more than the statutory rate of interest is called an assessment. T F
86. The person who lends money and to whom the property is mortgaged, is called the mortgagee. T F
87. Paying off a mortgage by regular periodic payments is called the reduction of a mortgage. T F
88. It is to the seller's advantage to have a buyer obtain a new mortgage rather than to assume and agree to pay the existing mortgage. T F
89. When a mortgage is overdue and it is the desire of the owner to negotiate the continuance of the mortgage to a later date, he negotiates an Estoppel Certificate. T F
90. A blanket mortgage is a single mortgage on two or more parcels of land as security for a single loan. T F
91. A debtor who gives five properties of equal value to a lender as security for a mortgage loan can require the lender to release any one parcel upon payment of one-fifth of the mortgage debt. T F
92. Where a mortgagor makes an addition to a dwelling after the mortgage has been placed, he can receive credit for the cost of such addition in event of a mortgage foreclosure sale of the dwelling. T F
93. Certain real estate was sold in a foreclosure sale bought by the first mortgagee for \$5,400. There was a first mortgage of \$6,000 and a second mortgage of \$2,400. The second mortgagee will receive \$1,800. T F
94. In the preceding case, the second mortgagee will receive nothing. T F
95. The debtor is protected in making mortgage payments to the original mortgagee, even though there is an assignment of the mortgage to a new person duly recorded. T F
96. Where a mortgage has been assigned, the law requires the debtor to give the assignee a Declaration of No Setoff, or a Certificate of No Defense. T F
97. If the mortgage is past due, it cannot be assigned. T F
98. The monthly payments on an amortized loan include the interest. T F
99. When a mortgage debt is past due, and unpaid, and the holder of the mortgage wishes to force the sale of the property to satisfy the debt, he starts an action for Specific Performance. T F

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| 100. A Certificate of No Defense is obtained from the mortgagee by the purchaser of a mortgage. | T | F |
| 101. Property on which there is an F.H.A. mortgage can be further encumbered by a judgment. | T | F |
| 102. In all cases, the redemption period of the mortgagor is six months after foreclosure sale. | T | F |
| 103. The holder of a mortgage may sell or transfer the mortgage to a third party; the new holder obtains no greater interest than that which the original holder had at the time of transfer. | T | F |
| 104. A mortgage which is taken back as part of the selling price is called a Blanket Mortgage. | T | F |
| 105. A borrower, under a mortgage, is allowed one year in which to redeem the encumbered property after mortgage foreclosure sale. | T | F |
| 106. A mortgage may be satisfied by full payment or foreclosure. | T | F |
| 107. A mortgage note is personal property. | T | F |
| 108. A trust deed does not take priority over a previously recorded mortgage. | T | F |
| 109. A mortgage is executed by the mortgagee in favor of the mortgagor. | T | F |
| 110. An instrument which transfers possession of property but does not transfer ownership, is a mortgage. | T | F |
| 111. A majority of a commercial bank's investments are in mortgages. | T | F |
| 112. A mortgagee in possession may be liable for sidewalk injuries to a pedestrian. | T | F |
| 113. A mortgage on an industrial plant covers the machinery and equipment necessary to operate the plant. | T | F |
| 114. Where the mortgage is in default, it is more advantageous to the mortgagor to give a voluntary deed than to suffer foreclosure by mortgagee. | T | F |
| 115. As real estate activity increases, mortgage foreclosures increase. | T | F |
| 116. Interest rates on mortgages in comparison with yields from other investment, determine the supply of available mortgage funds. | T | F |
| 117. A purchase money mortgage is one taken by the seller in part payment of the purchase price. | T | F |
| 118. Where a mortgage calls for "not less than \$66.00 per month," it can be paid off at any time. | T | F |
| 119. It is now customary to place the mortgage on record, before the mortgagee releases the funds to the mortgagor. | T | F |
| 120. The closing statement to the seller should reflect all of the mortgage costs to the buyer. | T | F |
| 121. It is the obligation of the seller to pay for the cost of preparing the mortgage papers. | T | F |
| 122. Title insurance for the amount of the mortgage affords the owner no protection after the loan is paid off. | T | F |
| 123. An owner's title insurance policy, in a mortgage case, can be obtained at a small additional cost. | T | F |
| 124. The "pay-off" figure on an amortized mortgage changes from month to month. | T | F |
| 125. The proceedings to discharge an old mortgage, upon which no payments have been made for more than 20 years, is an action to quiet title. | T | F |
| 126. Assignment of a mortgage is the same as negotiability of a promissory note. | T | F |
| 127. A mortgagee can enjoin the removal of a building from the mortgaged premises. | T | F |
| 128. Waste is an action by the mortgagee which lessens the value of the property. | T | F |
| 129. Of the parties to a trust deed, the trustor is the "lender." | T | F |
| 130. A trust deed may be satisfied of record by marginal release. | T | F |
| 131. Defeasance clause in a mortgage nullifies the conveyance. | T | F |
| 132. A G.I. loan and a V.A. loan mean the same thing. | T | F |
| 133. The evidence of a personal debt which is secured by a lien on real estate is called a mortgage. | T | F |
| 134. A mortgage is considered satisfied when an offset certificate has been filed. | T | F |

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| 135. If a person "assumes" a mortgage, the most he can lose, in the event of foreclosure, is the amount of his equity in the property. | T | F |
| 136. A Certificate of Reduction of Mortgage is generally required when the mortgage is sold. | T | F |
| 137. A recorded mortgage binds all and any real property subsequently acquired by the mortgagor. | T | F |
| 138. In order that a note be legally enforceable it must be properly acknowledged. | T | F |
| 139. The clause which permits the placing of a mortgage at a later date which will take priority over an existing mortgage is the subordination clause. | T | F |
| 140. A mortgage should be properly acknowledged and recorded. | T | F |
| 141. Redemption is the right which a mortgagor has to redeem his property after the expiration date. | T | F |
| 142. A chattel mortgage is never recorded as it is not secured by real estate. | T | F |
| 143. An acceleration clause in a mortgage speeds up mortgage payments. | T | F |
| 144. An interest rate of 12 per cent is considered usurious. | T | F |
| 145. The legal compensation received from the use of real estate is called equity. | T | F |
| 146. The recording of a "Satisfaction Piece" is the only way a mortgage record can be released. | T | F |
| 147. The mortgagor is required to pay fire insurance premiums. | T | F |
| 148. Most interests in real property can be mortgaged. | T | F |
| 149. A property subject to a G.I. guaranteed mortgage cannot be sold except to another qualified veteran. | T | F |
| 150. A mortgage covering two or more lots in a recorded subdivision is a double mortgage. | T | F |
| 151. It is possible to exchange one mortgaged property for another mortgaged property even though the mortgage amounts are unequal. | T | F |
| 152. A title mortgage title insurance policy insures the mortgagor as well as the mortgagee. | T | F |
| 153. The amount of a construction loan mortgage must be in the same amount as the permanent mortgage. | T | F |
| 154. An Extension Certificate and an Estoppel Certificate mean the same thing. | T | F |
| 155. The monthly interest on a mortgage is usually paid at the end of the month and not at the beginning. | T | F |
| 156. Every mortgage is a Purchase Money mortgage. | T | F |
| 157. Strict foreclosure is available where a mortgage is involved. | T | F |
| 158. An acceleration clause in a mortgage advances the maturity date. | T | F |
| 159. The date when the mortgage was executed determines its priority. | T | F |
| 160. The mortgagor pays the title insurance fee on a mortgage. | T | F |
| 161. The law requires the consent of the mortgagee in order for an owner to sell his property subject to the mortgage. | T | F |
| 162. A mortgagee is protected by the recording acts. | T | F |
| 163. A mortgagee is bound to accept payment of the mortgage at any time offered. | T | F |
| 164. A mortgage must be recorded to become a lien on property. | T | F |

Multiple Choice

(Answers to this section are on page 705.)

1. The dollar value of a property above the total amount of the mortgage constitutes the owner's
 - (a) redemption value.
 - (b) largess.
 - (c) equity.
 - (d) personalty.

2. When a buyer assumes and agrees to pay an existing mortgage, he
 - I. assumes risk of losing property for non-payment of mortgage, but no personal obligation.
 - II. releases the original mortgagor from any liability on the mortgage.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
3. Alvin loaned Boyd, a carpenter, \$5,000 on a mortgage on Boyd's home on January 12, 1975, for the term of three years at $7\frac{1}{2}$ per cent interest. In May 1977, Boyd builds an additional den to Alvin's home, at an agreed price of \$2,200. On September 6, 1977, Alvin assigns the mortgage to Citizens Loan Co. Boyd tenders the Citizens Loan Co. \$2,800 in full payment of the mortgage debt, which is refused. Under these circumstances:
 - I. the full mortgage debt is discharged.
 - II. Citizens Loan Co. can now sue Boyd in assumpsit, alleging unjust enrichment.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
4. If a lender releases an original mortgagor from liability, the substitution must be evidenced by an instrument called
 - (a) a certificate of no defense.
 - (b) a novation.
 - (c) an estoppel certificate.
 - (d) subordination.
5. A junior trust deed (mortgage) can be determined by
 - (a) reference to recorded deed of mortgagor.
 - (b) the introductory clause in the recorded instrument.
 - (c) date of recording the instrument.
 - (d) date when the instrument was signed.
6. A provision in a mortgage requiring prior written notice to the mortgagee and the mortgagee's approval, in event of sale of the mortgaged premises,
 - (a) is contrary to public policy.
 - (b) is valid.
 - (c) violates the statute of frauds.
 - (d) has illegality of object.
7. The right of a mortgagor to redeem the property by paying the debt after maturity is called
 - (a) reversion.
 - (b) ademption.
 - (c) redemption.
 - (d) recapture.
8. The interest or value which an owner has in the property over and above the mortgage debt is known as
 - (a) an escrow.
 - (b) an equality.
 - (c) an equity.
 - (d) a surplus.
9. A purchase money mortgage is
 - (a) a mortgage given to the seller or third person by the purchaser as part of the purchase price.
 - (b) a partial release of the first mortgage.
 - (c) a mortgage on personal property purchased.
 - (d) used in a land contract transaction.

10. The Trustor in connection with a trust deed is the party who
 - (a) lends the money.
 - (b) receives the payments on the note.
 - (c) signs the note.
 - (d) holds the property in trust.
11. A clause in a deed of trust or mortgage or accompanying note, which permits the creditor to declare the entire unpaid sum due upon certain default of the debtor, is
 - (a) an acceleration clause.
 - (b) a liquidation clause.
 - (c) a forfeiture clause.
 - (d) an escalator clause.
12. A deed of trust is usually conveyed to the
 - (a) grantor.
 - (b) broker.
 - (c) public trustee.
 - (d) mortgagor.
13. A mortgage is released by
 - (a) reversion.
 - (b) reconveyance.
 - (c) quit claim deed.
 - (d) satisfaction.
14. The money for making F.H.A. loans is provided by
 - (a) qualified lending institutions.
 - (b) any governmental agency.
 - (c) the Federal Housing Administration.
 - (d) the Federal Deposit Insurance Corporation.
15. An agreement to waive prior rights in favor of another is called
 - (a) subordination.
 - (b) subjugation.
 - (c) subjacent.
 - (d) none of these.
16. One mortgage theory is that a mortgage is a lien. The other is
 - (a) an escrow.
 - (b) an estate in fee tail.
 - (c) a transfer of title.
 - (d) a reversionary estate.
17. Which of the following pays the one per cent handling charge on an F.H.A. mortgage?
 - (a) The lending institution.
 - (b) The borrower.
 - (c) The seller.
 - (d) The broker who negotiated the loan.
18. A chattel mortgage is given to secure
 - (a) an eviction.
 - (b) livestock.
 - (c) a lease.
 - (d) money borrowed on real property.
 - (e) a loan on personalty.
19. A reduction certificate is required when
 - (a) the mortgage is assigned.
 - (b) the property is sold.
 - (c) a new mortgage is placed.
 - (d) the mortgage is being extended.
20. A Veterans Administration loan is guaranteed by the
 - (a) mortgage company.
 - (b) F.H.A.

- (c) Veterans Administration
 - (d) broker who made the deal.
21. The owner of five parcels of real property desires a mortgage loan and offers all five parcels as security. The mortgage he will be required to execute will be
- (a) a purchase money mortgage.
 - (b) an amortizing mortgage.
 - (c) a blanket mortgage.
 - (d) a building and loan mortgage.
22. A mortgage is usually released of record by recording
- (a) quit claim deed.
 - (b) satisfaction piece.
 - (c) reconveyance.
 - (d) estoppel certificate.
23. In the event that a penalty is being charged in the prepayment of an F.H.A. loan, it is
- (a) \$50.00.
 - (b) \$75.00.
 - (c) 1 per cent of the face of the mortgage.
 - (d) 2 per cent of the face of the mortgage.
24. A loan issued by the F.H.A. is usually borrowed from the
- (a) government.
 - (b) lending institution.
 - (c) seller.
 - (d) county.
 - (e) Federal Housing Administration.
25. A blanket mortgage covers
- (a) farm property.
 - (b) more than one parcel of real estate.
 - (c) personal property.
 - (d) a coal or gas furnace.
26. In the sale of a mortgaged property, it is necessary
- (a) to obtain the consent of the mortgagee.
 - (b) to pay off the mortgage.
 - (c) for the grantor to deliver a deed.
 - (d) to obtain a court order.
27. An F.H.A. mortgage is one which is
- (a) so known because the principal is reduced monthly.
 - (b) financed by F.H.A. money.
 - (c) insured by a Federal Government agency.
 - (d) on property owned by a veteran.
28. When a mortgage is given as part of the consideration price a mortgage clause will be written in the
- (a) insurance policy.
 - (b) equity of redemption.
 - (c) deed.
 - (d) mortgage.
29. Amortization is the process of
- (a) liquidation of a debt.
 - (b) depreciation.
 - (c) winding up a business.
30. The acceleration clause in a mortgage is for the benefit of the
- I. mortgagor.
 - II. mortgagee.
- (a) I only.
 - (b) II only.
 - (c) both I and II.

- (d) neither I nor II.
31. Where a lease antedates a mortgage, the mortgagee in possession has a right to
- (a) evict the tenant.
 - (b) collect the rent.
 - (c) foreclose the property and terminate the lease.
32. The existing mortgage which is taken back as part of the selling price is called
- (a) a blanket mortgage.
 - (b) an assumed mortgage.
 - (c) a subordinated mortgage.
 - (d) an extension of mortgage.
33. An estoppel certificate is required when
- (a) the mortgage is sold by the mortgagee.
 - (b) the property is sold.
 - (c) a new mortgage is placed.
 - (d) the property is being foreclosed.
34. In the absence of an agreement to the contrary, the mortgage normally having priority will be
- (a) the one for the highest amount.
 - (b) the one which is a first mortgage.
 - (c) the one that was recorded first.
 - (d) the one that is a construction loan mortgage.
35. The mortgage on real estate that includes items such as refrigerators, ranges and electric washers is referred to as a
- (a) blanket mortgage.
 - (b) package mortgage.
 - (c) participation mortgage.
 - (d) private mortgage.
36. A mortgage which has both personalty and realty as security is a
- (a) chattel mortgage.
 - (b) package mortgage.
 - (c) blanket mortgage.
 - (d) an open end mortgage.
37. The mortgage covenant which permits the mortgagee to advance the due date of the principal of the mortgage is called
- (a) prepayment clause.
 - (b) foreclosure clause.
 - (c) acceleration clause.
 - (d) demising clause.
38. The owner of a property places a bank mortgage on it. He later sells the property with the buyer assuming and agreeing to pay the existing mortgage. In the event the bank later forecloses and sells the property at an amount less than the balance of the mortgage, which statement is correct?
- (a) Only the original owner is liable for the deficiency.
 - (b) Only the buyer is liable for the deficiency.
 - (c) Neither is liable. The bank can only collect what it realized on the sale of the property.
 - (d) The bank could look to the buyer or seller, or both for payment of the deficiency.
39. A chattel mortgage is usually given in connection with
- (a) real property.
 - (b) farm lands.
 - (c) a trust deed.
 - (d) personal property.
 - (e) commercial property.
40. The instrument which may conditionally convey title is
- (a) an option.

- (b) a patent.
 - (c) a mortgage.
 - (d) a quit claim deed.
41. Trust Deeds are used to
- (a) finance purchase of stocks.
 - (b) secure a judgment.
 - (c) borrow money.
 - (d) bond an administrator of an estate.
42. A "satisfaction piece" is a writing that
- (a) records payment of a deed of trust indebtedness.
 - (b) records and acknowledges a paid-off deed of trust (mortgage).
 - (c) pays a landlord for damages to his property.
 - (d) renders satisfaction to a lessor for personal damages.
43. A "balloon" payment on a deed of trust refers to the
- (a) first payment.
 - (b) final payment.
 - (c) middle payment.
 - (d) second payment.
44. An owner who desires a deed of trust loan and offers three properties as security will be required to execute which type of deed of trust:
- (a) blanket.
 - (b) F.H.A.
 - (c) conventional.
 - (d) building and loan.
45. A mortgage which is past due and subject to foreclosure at any time is called
- (a) an open mortgage.
 - (b) a senior mortgage.
 - (c) a primary mortgage.
 - (d) a closed mortgage.
46. Money realized at a foreclosure sale on a mortgage in excess of the mortgage indebtedness belongs to
- (a) purchaser at sheriff's sale.
 - (b) sheriff.
 - (c) mortgagee.
 - (d) mortgagor.
47. The usual term of a mortgage in the \$20,000 price for dwellings is
- (a) 12 years.
 - (b) 35 years.
 - (c) 20 years.
 - (d) 10 years.
48. The borrower under a Trust Deed is the
- (a) grantor.
 - (b) grantee.
 - (c) cestuique trust.
 - (d) none of these.
49. A clause releasing one lot in a mortgaged subdivision is
- (a) release.
 - (b) an exoneration.
 - (c) prepayment clause.
 - (d) an equity.
50. When a mortgage is foreclosed, any lease made after the date of the mortgage is
- (a) terminated.
 - (b) binding upon tenant, but not the mortgagee.
 - (c) not affected in any way.
 - (d) binding upon purchaser at the foreclosure sale, but not upon tenant.

51. The mortgagor's right to reestablish ownership, after delinquency, is known as
 - (a) a statute of allowances.
 - (b) unjust enrichment.
 - (c) equity of redemption.
 - (d) acceleration.
52. The Federal National Mortgage Association purchases
 - (a) chattel mortgages.
 - (b) F.H.A. mortgages.
 - (c) government-insured mortgages.
 - (d) conventional mortgages.
53. Which one of the following statements is false?
 - (a) The Federal Government supplies the funds to the lending agency.
 - (b) The Federal Government insures the lending agency against losses.
 - (c) F.H.A. may insure either apartment house project or a residence mortgage.
 - (d) V.A. is limited to G.I. mortgages.
54. A G.I. loan is the same as
 - (a) an F.H.A. loan.
 - (b) a V.A. loan.
 - (c) a d.s.b. loan.
 - (d) a co-insured loan.
55. The usual remedy on a defaulted mortgage is
 - (a) issue a court citation.
 - (b) sequestration.
 - (c) foreclosure sale.
 - (d) eviction.
56. In all cases of an open end mortgage, the promise to repay the advances
 - (a) is made at the time the mortgage is given.
 - (b) is made before each advance is paid to mortgagor.
 - (c) may be made at any time within one year of the date of the mortgage.
 - (d) must be made 30 days before any advance is paid.
57. A clause in a mortgage whereby the mortgagee waives his rights in favor of another party is known as a subordination. Under these circumstances:
 - I. the first lien holder is called an assignee.
 - II. the first lien holder has no further security.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
58. Adams holds a mortgage on Abbott's property. Adams is now selling the mortgage to Chance. Under these circumstances, it is necessary for
 - I. Chance to obtain a Certificate of No Defense (an Estoppel Certificate) from Adams.
 - II. Chance to obtain such a certificate from Abbott.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
59. The purpose of a mortgagee clause in a comprehensive insurance policy is
 - I. to make the mortgagor first beneficiary of the insurance proceeds, in event of a fire loss.
 - II. to make the lender liable for the payment of premiums.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

60. Where a property is foreclosed upon a mortgage and the mortgagee buys the property at a foreclosure sale, he should receive a deed from
- I. the owner.
 - II. the sheriff.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
61. A mortgage purportedly executed by husband and wife, was acknowledged before the husband, a notary public. The wife's signature was a forgery.
- (a) The mortgage is void as to H and W.
 - (b) The mortgage is void as to W.
 - (c) The mortgagee can collect only.
 - (d) The mortgage is a nudum pactum.
62. Kline is the owner of three separate tracts of land, A, B and C. He gives a single mortgage of \$9,000 on all three tracts to Young. Later, Kline sells tract "A" to Hoyle for \$4,000 and takes a purchase money mortgage from Hoyle for \$3,000. Young gives a subordination agreement to Kline. Under these circumstances:
- I. Young still has a blanket first mortgage against tracts "B" and "C."
 - II. Kline has a first mortgage on tract "A."
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
63. Lewis entered a judgment of \$400 on December 6, 1973 against Brown, who owns a tract of land. Brown gave a mortgage for \$1,500 to Carlson on January 3, 1974. The mortgage is in default on August 2, 1974, and Brown agrees to deed the property to Carlson in satisfaction of the mortgage debt. Under these circumstances:
- I. the deed is valid.
 - II. Carlson will take the property subject to the judgment of Lewis.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
64. Stevens gives Thomas a mortgage for \$5,000. Later, Thomas purchases a piano from Stevens for \$1,100 and agrees to offset the purchase price against the mortgage debt. Subsequently, Thomas sells the mortgage to Queens for \$5,000. Under these circumstances:
- I. Queens can collect \$3,900 from Stevens.
 - II. Queens can collect \$1,100 from Thomas.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
65. Adams gave a mortgage for \$4,000 to Haines. He gave a second mortgage to Hill for \$3,000 and a third mortgage for \$2,000 to Green. Hill forecloses. The property brings \$6,250 at sheriff sale. Under these circumstances:
- I. each mortgagee will receive \$2,000.
 - II. the purchaser will take the property subject to Haine's mortgage.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
66. A mortgage contained a clause, making the entire debt due, if the mortgagor conveyed title to the property to a third person. The property was conveyed. The mortgagee

- brought an action to accelerate the debt.
- (a) The mortgagor will win.
 - (b) The mortgagee will win.
 - (c) The purchaser will be held liable.
 - (d) The acceleration clause is void as against public policy.
67. An obligation in a deed of trust (mtge.) was secured by a promissory note calling for monthly payments of \$80 per month. The debtor paid \$100 monthly from June 15, 1974 to December 15, 1977. He then ceased making payments. On Feb. 16, 1978, the creditor brought foreclosure proceedings.
- (a) The foreclosure is invalid.
 - (b) The foreclosure is valid.
 - (c) Creditor must wait three months before instituting action.
 - (d) The obligation is now void.
68. A purchaser buys a property, assuming and agreeing to pay an existing mortgage, placed by the seller. The seller is
- I. liable for the debt, until it is paid.
 - II. buyer only is liable for the debt.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
69. The instrument which conditionally conveys title to real estate is a
- (a) chattel mortgage.
 - (b) conditional bailment lease.
 - (c) escrow deed.
 - (d) mortgage.
70. The grantor in a trust deed is
- (a) the mortgagor.
 - (b) the mortgagee.
 - (c) the trustee.
 - (d) an escrow holder.
71. The instrument used to remove the lien of a deed of trust from the record is called a
- (a) redemption of equity.
 - (b) satisfaction.
 - (c) certificate of no defense.
 - (d) deed of reconveyance.
72. When a purchaser of a property assumes and agrees to pay an existing mortgage, it is to the legal benefit of the
- I. purchaser
 - II. seller
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

JUDGMENTS

FROM EARLY times (1688) lands of debtors have been subject to liens as security for debts. Although almost every person is interested in judgments from viewpoints of creditor and debtor, very few people are sufficiently conversant with the legal principles that apply. In the first place, what is a judgment? In legal parlance, it may be defined as a decree of a court of competent jurisdiction declaring that one individual (the debtor) is indebted to another (the creditor), and fixing the amount of such indebtedness. A verdict obtained in every court is not necessarily a judgment. Some further step may be necessary to reduce the verdict to judgment; hence the qualification in the definition, "of a court of competent jurisdiction."

In personam and in rem

Judgments fall into two main classes, judgments *in personam* (against the person) and judgments *in rem* (against the thing or particular property). A judgment *in personam* may be termed a general lien; a judgment *in rem* may be called a specific lien. Most judgments are against the person, and as such, bind *all* his real estate. Adams sues Burns on a contract (in *assumpsit*) and obtains a judgment; or Jones sues Smith for damages due to an automobile accident (in *trespass*) and obtains a judgment. Both are *in personam*. A tax lien, an assessment for a street improvement, and a mechanic's lien are judgments *in rem*. That is, the judgment binds only the particular piece of real estate for which the tax was due, or which benefited by the street improvement, or upon which the work was performed and for which materials were furnished by the mechanic or material supply dealer. It is a judgment against the particular person by reason of his being the owner of that particular piece of real estate. The effect of a judgment is that a lien immediately attaches against the debtor's real estate upon the entry of the judgment. It automatically binds all the real estate located in the county where the judgment is entered. That is what is meant by the *lien* of the judgment. A lien may be defined, in technical language, as a hold or claim which one person has upon the property of another as a security for some debt or charge. It is the right which the creditor has under the law to have the debt satisfied out of the debtor's property. If the creditor merely has a claim not reduced to judgment, the debtor can sell or mortgage his property, free and clear of such unsecured claim. If the creditor has reduced his claim to a judgment, a lien is thereby created against the real estate. A purchaser would then take the property subject to the lien and stand in the place of the debtor.

A judgment, other than a judgment *in rem*, binds every freehold interest in the land. A judgment entered against a life tenant will bind his interest in the property, which may be sold to satisfy the judgment. The purchaser would take the property for or during the lifetime of the debtor, as a tenant *pour autre vie* (for the life of another).

Lien on personal property

Judgments are not liens on the personal property of the debtor as they are on his real estate. A debtor may convey good title to a bona fide purchaser of his automobile or other personal property even though there is a judgment of record against him. Personal property may, however, be seized in satisfaction of a judgment debt. This is done by levy or attachment upon directions to the sheriff, the executive officer of the court, to seize and sell the described property. A mortgage, while it deals with real estate, is personalty, but the court can direct the sheriff to levy on a mortgage belonging to the debtor and sell it. The same is true of a leasehold. In other words, a creditor is entitled to proceed against any property of his debtor to recover his debt. In a sense, a debtor is a trustee for his creditors.

Release of judgment

It is always important to remember that a judgment attaches and adversely affects real estate of a debtor, as a lien, just as soon as it is entered of record. The judgment is a lien against all of the real estate owned by the debtor at the time the judgment is entered. The owner cannot give a purchaser good title to any part of the real estate owned by him. No prudent buyer would accept title thus encumbered, nor could the creditor be compelled to release any part of the debtor's real estate upon payment of any sum short of the full debt. A release is a matter of indulgence by the creditor. The real estate released should be noted on the margin of the recorded judgment.

In a subdivision property with a mortgage against the entire property, it is the usual practice to include in the mortgage a clause that upon the sale of any lot, the mortgagee will release the particular lot sold, upon payment to him of (X) dollars.

When the debtor pays the judgment, he is entitled to have the judgment marked "satisfied in full" of record.

Lien period

The lien of a judgment does not last forever. As between the original debtor-owner and judgment creditor, execution may be had against the debtor's property at any time, so long as the debtor continues to own it and rights of mortgagees or other judgment creditors have not intervened. The lien of the judgment lasts for a limited period of time, and, if the judgment is not revived within the prescribed period of time, the lien against a subsequent purchaser, mortgagee, or judgment creditor is lost. In Pennsylvania, the lien of the judgment lasts five years. If the judgment is for longer than the statutory period and no action taken to revive it, a purchaser from the debtor takes the property free from the judgment. In other jurisdictions, the judgment is a lien for ten years.

Even though the lien period has expired, it is not extinguished, but can be revived. If the debtor still owns the property, it can be sold on the judgment.

Where plaintiff's attorney quietly took default judgment on beginning of first day on which defendant's answer was delinquent, the trial court acted properly in setting aside judgment: *Robinson v. Varela*, 136 Cal. Rptr. 783 (1977).

A lien, as revived by a scire facias (to show cause) proceeding, attaches only as of the date of the revival: *Mitchell v. Chastain*, 233 S.E. 2d 829 (Ga. App. 1977).

Judgments arise in several ways, among which are court decision, default, and confession. Since litigation is always prevalent, a great many judgments arise through court action. Where the litigation takes place in a minor judiciary court such as a Justice of the Peace, a transcript of the verdict or judgment can be filed in

the proper County Court so as to be a lien. A judgment by default arises where the law requires a person to take some sufficient legal step and he fails to do so. For example, Thompson sues Bryan and serves him with a copy of his statement of claim. Bryan is then required to file an answer within a certain period of time, say 20 days, and he fails to do so. Thompson can enter judgment against Bryan because of Bryan's default. The great majority of judgments probably arise through confession, authorized in a note, bond, or lease. They are known as judgments DSB, which stands for *debitum sine brevi* and means "debt without a writ or declaration."

By confession

A judgment by confession is as conclusive as a judgment on the verdict of a jury. The main distinction between a promissory note and a judgment note is that upon a default in payment of a promissory note, the holder must sue the maker before he can obtain a judgment, while in a judgment note, the holder may enter up judgment upon a default, without any suit. This is so by reason of the language of the instrument which authorizes and empowers

... any Attorney of any Court of Record within the United States or elsewhere to appear for (me), and with or without declarations filed, confess judgment against (me) and in favor of said payee, his executors, administrators, or assigns, as of any term for the above sum with costs of suit, etc.

In fact, the holder of the note may confess judgment at any time, even before default or maturity, but no execution can issue until default. If the obligor is deceased, judgment may not be confessed against him as death revokes the agent's power to confess. Where one joint obligor dies, the note can be entered as a judgment against the survivor; it is irregular to enter the note against all of the obligors including the decedent. Judgment by confession operates in a very summary manner, and very often the debtor is unaware that a judgment has been entered against him until he tries to sell his property or place a mortgage upon it. If the debtor claims that the entry of the judgment is unjust, he may petition the court to open up the judgment; and if the court, in the exercise of its sound judicial discretion, believes that the debtor should be permitted to make a defense, it will open up the judgment and then the case is heard *de novo* (anew) to determine whether the plaintiff is entitled to his judgment.

A motion to enter summary judgment is to be granted only where there is no triable issue of material fact: *Kenne v. Wiggins*, 138 Cal. Rptr. (Cal. App. 1977).

A default judgment rendered without proof of the demand sufficient to establish a prima facie case must be set aside: *Courville v. Southern Casualty Ins. Co.*, 304 So. 2d 93 (La. 1974). There must be admissible evidence to demonstrate plaintiff's compliance with the contract, and defendant's failure to comply.

In *Robinson v. Varela*, 136 Cal. Rptr. 783 (Cal. 1977), the Court of Appeal stated:

The law looks with disfavor upon a party who, regardless of the merits of his case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. Thus, the "quiet speed" of a plaintiff's counsel in seeking a default has been deemed a sufficient ground for setting aside a default. . . .

A summary judgment should be granted, as a matter of law, where there is no genuine issue as to any material fact: *Freeman v. Augustine's, Inc.*, 360 N.E. 2d 1245 (Ill. App. 1977); *Kincaid v. Kinglun*, 559 P. 2d 1044 (Alaska 1977); *Keene v. Wiggins*, 138 Cal. Rptr. 3 (Cal. App. 1977).

To vacate such default judgment, it is essential for the defendant to show the existence of a meritorious defense and to present it with due diligence: *Lammert v. Lammert Industries, Inc.*, 360 N.E. 2d 1355 (Ill. App. 1977).

A default judgment should be set aside in any case in which the failure of the defendant to answer before judgment was not intentional or the result of indifference on his part: *Davis v. Thomas*, 548 S.W. 2d 755 (Tex. Civ. App. 1977).

Since a judgment can be entered summarily on a judgment (cognovit) instrument, because the debtor authorizes the confession of judgment against him, the courts have said that it should be cautiously invoked: *Cardinali v. Planning Board of Lebanon*; 373 A. 2d 251 (Me. 1977). The purpose of a summary judgment is not to try an issue of fact, but to ascertain whether there is a fact issue to be tried: *Fishel v. Givens*, 362 N.E. 2d 97 (Ill. App. 1977).

A petition to set aside a default judgment is addressed to the sound discretion of the court, and must be supported by clear, strong and satisfactory evidence of mistake, inadvertence, surprise or neglect: *Edwards v. Edwards*, 481 P. 2d 432 (Colo. App. 1970); *Ute, Inc. v. Opfel*, 518 P. 2d 156 (Nev. 1974). If the judgment appears erroneous upon its face, the proper proceeding is to strike it off by motion. The court will examine the record to ascertain the form of the judgment but will not go into the merits of the debtor's claim as in a petition to open up the judgment. A great volume of judgments on notes or bonds accompanying mortgages are confessed. If there is a genuine issue of fact, a summary judgment is inappropriate: *Williams v. N.C. State Board of Education*, 201 S.E. 2d 889 (1974). A judgment, of course, can only be collected for the real debt due. Deficiency judgments have been discussed in connection with mortgage foreclosures. Although the majority of an infant's contracts are voidable at the infant's election, nevertheless a warrant of attorney by a minor to confess judgment against him is absolutely void. A judgment so confessed will be vacated upon a motion to strike it off. Since the confession is void, a minor is deemed incapable of ratifying it. A summary judgment may not be entered where there is disputed question of fact, which is material to the disposition of the case: *Borough of Monroeville v. Effie's Ups and Downs*, 315 A. 2d 342 (Pa. Cmwlth. 1974); *Cardente v. Travelers Ins. Co.*, 315 A. 2d 63 (R.I. 1974). Default judgments are looked upon with disfavor: *Girkin v. Cook*, 518 P. 2d 45 (Oklahoma 1973).

In an action by house purchasers against brokers and vendors, the question whether the realty firm knew about water problem was a factual issue *precluding* summary judgment: *Cashion v. Ammadi*, 345 So. 2d 268 (Ala. 1977).

To vacate an ex parte judgment, a defendant must have a meritorious defense and must show that he exercised due diligence. It invokes the equitable powers of the Court, as justice and fairness require: *Coronet Ins. v. Jones*, 359 N.E. 2d 768 (Ill. 1977).

In the Federal Court case of *Swarb v. Lennox*, 314 F. Supp. 1091 (1970), the court held that the confession clause was a violation of the due process clause of the Constitution for persons having incomes less than \$10,000. The United States Supreme Court, in the same case 405 U.S. 191 (1972), affirmed part of the lower court decision, holding that it was not unconstitutional to enforce the confession of judgment against those earning over \$10,000.

It has been previously stated that a judgment is a lien against all of the real estate which the debtor owns at the time the judgment is entered against him. It does not bind property he acquires by purchase or by will after the date of entry of the judgment. Such after-acquired property can be brought under the lien of the credi-

tor's judgment by reviving the lien of the judgment. This can be done at any time. After-acquired property, sold by the debtor before revival of the judgment, would pass clear title to a purchaser without notice.

A judgment creditor may take the necessary legal action to foreclose the property in order to obtain satisfaction of the debt and the costs of the sale. Frequently, however, the creditor may do nothing since foreclosure proceedings necessitate an advance of costs and payment of any delinquent taxes against the property. The creditor may feel, rather, that in time the debtor will desire to sell or mortgage the property and will then have to make peace with the creditor and pay him off. This often happens. The creditor should be ever alert, however, that the lien of his judgment is not lost through passage of time. The creditor instituting foreclosure proceedings must be circumspect in complying with all legal requirements as to notice and advertisement of the property for sale. The property is put up at competitive public sale and sold to the highest bidder. Any excess funds realized at the sale, over and above the debts of record and costs, belong to the debtor-owner. Where there is more than one creditor, the funds are distributed in the order of priority of liens. The creditor who initiates the sheriff's sale obtains no preference on that account, but takes his place in distribution of funds according to the date when his judgment was entered. Where there is a first mortgage against the property, which is a first lien, and the property is sold on a later judgment lien, the first mortgage is not divested. The purchaser at sheriff's sale takes the property subject to the first mortgage. If the property is sold on the first mortgage, all liens would be divested, and the purchaser would obtain clear title. Where there are two or more mortgages of record, without any prior or intervening judgments, sale on a subsequent judgment would not divest any of the mortgages. The sheriff makes no warranty or guaranty of title. The risk and responsibility are entirely upon the purchaser.

Fraud on creditors

A property sold, mortgaged, or liened in an effort to hinder, delay, or defraud a creditor may be set aside by a creditor's petition to court for relief. A judgment entered the same day as a conveyance or mortgage of the property would constitute a prior lien against the property. In practice, a mortgagee may record his mortgage one day and disburse the funds the next day so as to have sufficient time to examine the records and ascertain that no judgment, mortgage, or adverse conveyance has been entered.

Mechanic's lien

A mechanic's lien is given to contractors, laborers, and material men, by statute, for work performed or materials furnished. It is really special class legislation, but has nevertheless been sustained by the courts. There must be strict compliance with the legal requirements as to serving the notice of intention to file the lien. A distinction as to time for filing a mechanic's lien is made as between new construction and repairs, and as between a contractor and subcontractor. The contractor may enter into a "No Lien Contract" with the owner, and, as the name implies, no mechanic's liens can be filed for work or materials furnished on the job for the owner. If the "No Lien Contract" is recorded, sub-contractors are bound by its terms, even though they had failed to take the precaution of examining the records. This does not give the owner, however, "letter perfect" protection. If after the "No Lien Contract" is filed, the terms of the contract are materially changed between owner and contractor, the "No Lien Contract" filed would be inoperative.

Delivery of materials to the owner or his agent, either upon the premises or otherwise, for use upon or in a particular project, is sufficient to sustain a mechanic's lien: *Kilgust v. Kemp*, 235 N.W. 2d 292 (Wis. 1975).

If there is no "No Lien Contract" filed, a sub-contractor, in Pennsylvania and other states, would have the right to file a mechanic's lien for his labor, even though the owner has made his required payments to the contractor. An irresponsible contractor often visits an unjust hardship upon the owner in this connection. A licensing law for contractors has been agitated in a number of states in order to make a contractor responsible to an owner under a building contract. In some states, a sub-contractor can recover only the balance due and owing by the owner to the general contractor under the building contract. The owner after receiving notice from a sub-contractor as to the value of his services is privileged to hold out such amount from the contract price and pay it directly to the sub-contractor. Notice from the sub-contractor is imperative. This is known as the "New York system."

In most states a mechanic's lien dates back to the beginning of the construction job. Thus mortgagees are apprehensive lest the mortgage be consummated and recorded before ground is broken. A prudent mortgagee will take the precaution to have photographs made of the site before any building or excavation has been performed at the time the mortgage was executed. This would be convincing evidence that no work had been done nor any materials used.

A mechanic's lien is subordinate to encumbrances recorded before commencement of work, but takes priority over all subsequent encumbrances: *Connolly Development, Inc. v. Superior Court of Merced County*, 553 P. 2d 637 (Cal. 1976).

A prospective mortgagee of improved real estate is required to make a physical examination of property to ascertain whether there has been recent work that might constitute a prior lien, even though the lien statement is not on file: *Lenexa State Bank and Trust Co. v. Dixon*, 559 P. 2d 776 (Kan. 1977).

A purchaser of property under construction is charged with any lien that is attached to the premises: *Hostetter v. Inland Development Corp. of Montana*, 561 P. 2d 1323 (Mont. 1977).

The sub-contractor has priority over a mortgage if the mortgage was recorded after the work started, even though the sub-contractor—a plumber, for example—did not render any service until after the building was well advanced. The time for serving notice of intention to file a mechanic's lien dates from the time when all the work is completed. An owner can protect himself by requiring the general contractor to post a performance bond or by reserving to the owner the privilege of paying sub-contractors' claims upon certification of the architect that the work has been satisfactorily performed.

A purchaser from a contractor relies upon a release of liens, which must be executed by every sub-contractor and material man who did work or furnished materials on the job. Unfortunately, in too many cases all of the material men or sub-contractors have not executed the release. They may file a claim at a later date, which the purchaser must pay even though full payment of the purchase price has already been made to the builder. Also, the purchaser may be deceived by an unscrupulous builder who furnishes a release, for example, signed by a lumber company that furnished only a small portion of the lumber used. The buyer may mistakenly believe that all claims for lumber have been paid, whereas the lumber company that furnished the bulk of the lumber has not signed a release nor has it been requested to do so. In purchasing a new building, it is recommended that title insurance be purchased insuring against mechanic's liens as well as defects in title.

Where carpet and carpet pad were installed directly over slab on ground floor and directly over unfinished plywood on second floor, glue used to hold down carpet was a long-lasting glue and tacks were used with great frequency, the court held that carpeting and pads were lienable items: *United Benefit Life Ins. Co. v. Norman Lumber Co.*, 484 P. 2d 527 (Okla. 1971). In the case of *Hartford Fire Ins. Co. v. Balch*, 350 P. 2d 514 (Okla. 1960), involving an insurance claim, the court found that the carpet was loosely tacked and glued in place; that the glue was merely intended to keep the carpet from slipping, and therefore, was personal property. Thus, the two cases are distinguishable.

A Minnesota case, *Reuben E. Johnson Co. v. Phelps*, 156 N.W. 2d 247 (1968) held that an architect, in preparation of plans for improvement and the work of a surveyor in doing a preliminary survey of the property on which a mortgage is to be placed, did not permit liens filed after the mortgage, to attach and take effect as of the date of the plans and preliminary survey.

A bulldozer operator could not file a mechanic's lien for work performed in removing brush and trees from subdivision since the court held the work was done "to" the land and not "upon it." *Lambert v. Newman*, 431 S.W. 2d 480 (Ark. 1968).

A subcontractor or material man cannot obtain a *personal* judgment against an owner on the basis of quasi contract or unjust enrichment, in the absence of a contract or direct promise to pay: *Holiday Development Co. v. Tobin Construction Co.*, 549 P.2d 1376 (Kan. 1976).

In the case of *Sears, Roebuck & Co. v. Seven Palms Motor Inn*, 530 S.W. 2d 695 (Mo. 1975), suit was entered to establish a mechanic's lien for draperies and bedspreads, specially ordered and custom made for a motel. The draperies were attached to rods, which were attached to the building; the bedspreads were made to fit over the beds, and could be readily removed and used elsewhere. The draperies were held to be fixtures and lienable, but not the bedspreads: *L.E.C., Inc. v. Collins*, 332 So. 2d 565 (La. App. 1976).

Read matter of *Country Village Heights Condominium*, 79 N.Y. Misc. 2d 9088 (Sup. Ct. 1975).

Marshalling

Where a creditor has two or more funds out of which to satisfy his debt, he cannot so elect as to deprive another creditor of his security who has but one fund. This is known as marshalling. For example, Benson entered judgment against Archer for \$1,700 on June 16, 1974. Archer owns three parcels of improved real estate. On January 3, 1976, Chance places a mortgage on one tract for \$1,500. Then, on March 20, 1978, Benson issues execution against the mortgaged tract. Chance can compel Benson to proceed first against the other two properties owned by Archer. Of course, if, upon the sale of the other two tracts, Benson does not receive the amount of his judgment in full, he may then proceed against the parcel upon which Chance holds his mortgage.

Indexing judgment

In concluding judgments, attention is directed to the necessity of identifying the debtor accurately in the judgment index. Omission of the middle initial of the debtor's name may prove fatal. The question is whether the debtor's name in the index is such as to put the searcher upon inquiry. Where property was held in the name of Daniel J. Murphy and judgment entered against Daniel Murphy, a court held the judgment was not a lien. Where land was owned by W. A. Black and judgment was entered against W. G. Black, the court held no lien. However, a judgment entered

against Rosie Reustle was held a good lien against property owned by Rosie C. Reustle. Rosie Reustle and Rosie C. Reustle were one and the same person, and the only person by that name in the county. A judgment against Caroline Kerl was a binding lien against real estate owned by Caroline C. Kerl. Each case necessarily depends upon its concomitant circumstances. The Pennsylvania Supreme Court,¹ in determining what constituted sufficient constructive notice, said:

It is not necessary that the name of the judgment debtor as docketed and indexed should be letter-perfect, nor do the cases hold that the omission of the middle initial in the entry of a judgment automatically and inevitably vitiates the entry and subordinates it to subsequent judgments more accurately docketed. Each case must depend upon concomitant circumstances.

Omission of a middle name may be misleading or harmful in cases where the surname is a relatively common one. The first or Christian name must be correct in the judgment. Title in name of Kathryn Steele, judgment entered against Catherine Steele held invalid.

In the case of *McCausland v. Davis*, 204 So. 2d 335 (Fla. 1967), the Court describes the types of notice of lien imputable to a purchaser, as follows:

... actual notice, implied notice (or implied actual notice) and constructive notice: "Actual notice" stems from actual notice of the facts in question; "Implied notice" is factual inference of such knowledge, inferred from the availability of a means of acquiring such knowledge, when the party charged therewith had the duty of inquiry; "Constructive notice" is the inference of such knowledge by operation of law, as under a recording statute. . .

In the case of *Maddox v. Astro Investments*, 343 N.E. 2d 133 (Ohio App. 1975), a certificate of judgment was filed with the clerk of courts on May 2, 1973, but it was not indexed until June 4, 1973. In the interim, title was transferred by the debtor-owner. The judgment lien was not discovered in the title search. The Court held that the judgment became a lien when it was delivered for filing with the clerk. Failure to index constituted negligence, as a matter of law.

Assignment

A judgment is personal property. It is readily assignable in the same manner as a note or mortgage may be assigned. The judgment creditor who transfers the judgment is the assignor. The party to whom the judgment is assigned is the assignee. The assignee takes no better title than the assignor had. The assignee takes subject to all equities existing between the original parties: *L. C. Russell Co. v. Pipeguard Corp.*, 504 S.W. 2d 596 (Tex. 1973).

¹ *Coral Gables, Inc. vs. Kerl*, 334 Pa. 441, 6 A. 2d, 275 (1939).

Questions on Judgments

1. Q. How long has an owner of property sold for taxes the right of redemption?
A. The period of redemption by the owner whose property has been foreclosed for taxes depends upon the state statute. The period varies. In Arizona, the period is three years from the date of sale, or any time before the deed to the purchaser. In California, five years. In Oregon, the period of redemption is one year from the date of the deed. A buyer of real estate for which taxes are delinquent is liable for payment, since the tax is an "in rem" tax (against the property), and not an "in personam" tax (against the person).
2. Q. What is the effect of a recorded judgment on the real property of the judgment debtor?
A. It is a lien upon all real property of the debtor in the county where the judgment is recorded.
3. Q. What is a deficiency judgment?
A. A judgment entered for the difference between the amount of the debt owed and the amount realized from the sale of the debtor's real property at foreclosure sale.
4. Q. In searching for liens on real estate what would you look for?
A. Mortgages, judgments, mechanic's liens, delinquent taxes, liens for certain city improvements, and delinquent vendor's liens.
5. Q. Does compliance with the Bulk Sales Law, in selling a business, relieve purchaser of all liability for outstanding indebtedness?
A. No. It does not protect the purchaser against back sales tax which may be due and owing by the seller and which constitutes a prior lien against the assets of any business.
6. Q. Define a judgment.
A. A judgment is a decree of a court of competent jurisdiction determining that one individual is indebted to another and fixing the amount of such indebtedness.
7. Q. What kinds of judgment are there?
A. Judgments are of two kinds, *in personam* and *in rem*. Judgments which bind the person against whom they are rendered and all of his real estate are judgments *in personam*, and judgments which bind a particular piece of real estate only and are against a particular person because he is the owner of that property are judgments *in rem*.
8. Q. Do judgments bind personal property?
A. Not in the sense that the judgment is a lien on the personal property of the debtor. Personal property, however, may be sold in satisfaction of a judgment.
9. Q. Is a judgment a lien on a mortgage?
A. No. A mortgage is personal property and not realty.
10. Q. Jones obtains a judgment for \$500 against Brown. The debtor, Brown, owns an automobile which he sells to Cox. Does Cox get good title to the automobile?
A. Yes. The automobile is personal property.
11. Q. Suppose Adams obtains a judgment for \$900 against Brant who owns tracts 1, 2, and 3. Can Brant sell tract 3 to Chalmers so that Chalmers will get a free unencumbered title to the property?
A. No. Adams' judgment is a lien against *all* of Brant's real property.

12. Q. In the preceding case, suppose Brant offers to pay Adams \$300 on account of the judgment and demands that Adams release tract 3 from the judgment so that Chalmers can obtain clear title. Must Adams release the lot?
- A. No. Execution of a release is a matter of accommodation by the creditor. He cannot be compelled to execute a release even though partial payment of the judgment is tendered.
13. Q. Is a judgment a lien on property acquired by a debtor after entry of judgment?
- A. No. Such after-acquired property can be brought under the lien of the judgment only by reviving the judgment.
14. Q. In what ways may judgments be entered?
- A. By verdict, default, or confession.
15. Q. Ash sells a tract of ground to Boone on November 21, 1977, and on November 22, 1977, Crane secures a judgment against Ash. Boone records his deed December 6, 1977. Will Crane's judgment be a lien against the property?
- A. Yes. The records showed Ash was the owner of the property when the judgment was entered.
16. Q. Suppose, in the preceding case, that Ash conveys the property to his wife on November 22, 1977. Could the deed be set aside?
- A. Yes. The conveyance is a clear fraud upon creditors.
17. Q. How long does a judgment remain a lien?
- A. Five years in some states, ten years in other states. (In Indiana, for example, the lien period is ten years.)
18. Q. Atkins secures a judgment against Burke for \$600 on June 16, 1964. Can Atkins on March 21, 1977, sell the property on his judgment?
- A. Yes. Although the lien period has expired, Atkins can still sell the property so long as a new purchaser's rights, or those of a creditor, have not intervened.
19. Q. White enters into an agreement of sale for the purchase of certain real estate on October 3, 1977. Black enters a judgment against White on October 4, 1977. The property is conveyed to White on November 26, 1977. Is Black's judgment a lien against this real estate?
- A. Yes. White's equitable title or interest in the real estate can be bound by the lien of a judgment.
20. Q. Is a lease of years subject to lien of a judgment?
- A. No. A lease of years is personality. However, if there is an option to purchase, the leasehold can be sold in execution.
21. Q. Suppose the following liens and encumbrances exist against Martin's property:
- (a) Fielding's mortgage for \$4,000 entered on June 16, 1977.
 - (b) Pope's judgment for \$2,250 entered on December 16, 1977.
 - (c) Swift's mortgage for \$1,000 entered on February 2, 1978.
 - (d) Gray's judgment for \$750 on February 6, 1978.
- The property is sold on Gray's judgment on March 1, 1978. The costs and taxes amount to \$710. The property is sold for \$3,650 to Williams. How will this fund be distributed, and subject to what liens, if any, will Williams, the purchaser, take the property?
- A. The costs and taxes of \$710 will be paid first, leaving \$2,940 for distribution. Pope will be paid in full. Swift will receive the balance of \$690. Gray will get nothing. Williams will take the property subject to Fielding's mortgage. Where the first mortgage is a first lien and the sale takes place upon a subsequent lien, the mortgage is not divested.
22. Q. Suppose the following liens and encumbrances exist against Jones' property:
- Benson's mortgage for \$25,000 entered on October 3, 1977.
 - Conover's mortgage for \$5,000 entered November 25, 1977.
 - Dodd's mortgage for \$1,000 entered April 25, 1978.
 - Evans' judgment for \$7,500 entered April 26, 1978.
 - Franklin's judgment for \$1,200 entered May 3, 1978.

The property is sold on Evans' judgment and brings \$9,750. The cost and taxes amount to \$850. How will the \$9,750 be distributed and subject to what liens, if any, will the purchaser, Johnson, take the property?

- A. Costs and taxes will be paid first, leaving \$8,900 for distribution. Evans will receive \$7,500, Franklin will receive \$1,200, and the balance of \$200 will go to Jones, the owner. Johnson will take the property subject to the three mortgages of Benson, Conover, and Dodd. Where there are two or more mortgages against a property and no prior or intervening judgment, and a sale takes place upon a subsequent lien, none of the mortgages is divested.
23. Q. In the event that Grafton had a judgment of \$150 entered on October 1, 1964, revived in 1968, show how the fund in the preceding case would be distributed and subject to what liens, if any, Johnson would take the property.
- A. After payment of costs and taxes, Grafton would receive \$150 and the balance of \$8,750 would be paid to Benson. Conover, Dodd, Evans, and Franklin would receive nothing. The purchaser would take the property free and clear of all liens. The judgment, being the first lien, divests all the mortgages and judgments.
24. Q. How could Benson and the other creditors have protected themselves?
- A. By appearing at the foreclosure sale and bidding the property up to cover their liens.
25. Q. Is title acquired by purchase at a treasurer's sale for unpaid municipal taxes good and marketable?
- A. Ordinarily, a title insurance company will not insure a tax sale title. The title is, thus, not good and merchantable. Besides, the owner of the property usually has one year's time within which to redeem the property.
26. Q. What is the best way for the purchaser of a new home from a contractor to protect himself from the filing of mechanic's liens against the property?
- A. Title insurance is the best protection. He could require a surety bond for performance or completion; a release of liens from all sub-contractors and material men; have the general contractor file a "no-lien" contract; pay out the money as the work progresses.
27. Q. Special tax assessments (or liens) are levied against city property. Name four things for which special assessments may be levied.
- A. Street paving, curb, sidewalk, sewer.
28. Q. A lien filed against real property by the contractor for labor or material is called a
- A. ☐ labor lien.
☐ completion notice lien.
☒ mechanic's lien.
☐ builder's lien.
29. Q. A property is sold in a foreclosure sale at \$5,000. There was a first mortgage against the property for \$4,600 and a second mortgage lien of \$1,000. Unpaid taxes amounted to \$400. Show the distribution of the \$5,000 sale upon first mortgage.
- A. Taxes will be paid first in amount of \$400. First mortgagee will get \$4,600. Second mortgagee will receive nothing.
30. Q. What is the difference between a promissory note and a judgment note?
- A. In a promissory note, if it is not paid at maturity, the holder must *sue* the maker to obtain a judgment. In a judgment note, if it is not paid at maturity, the holder can forthwith *confess* judgment against the maker of the note.
31. Q. Who is a holder in due course of a note?
- A. A person who has obtained a note for a valid consideration, before maturity, without knowledge of any defect in the instrument, or of any setoff to the debt.

True and False

(Answers to this section are on page 706.)

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|--|---|---|
| 1. A charge by a water company, if unpaid, is a lien on real estate. | T | F |
| 2. A judgment must be recorded to become a lien against real estate. | T | F |
| 3. A lien is always an encumbrance. | T | F |
| 4. In a "joint and several" obligation, suit must be entered against all of the obligors. | T | F |
| 5. The duty is upon the creditor to see that his judgment is properly indexed. | T | F |
| 6. An unsecured creditor can reduce his claim to a judgment by filing his claim in the clerk or prothonotary's office. | T | F |
| 7. A prothonotary is the chief clerk of the county or district court. | T | F |
| 8. The lien of a judgment binds real estate only. | T | F |
| 9. A mechanic's lien is a general lien. | T | F |
| 10. Personal property may be sold upon a judgment. | T | F |
| 11. Postponing a lien is preferable to releasing a lien. | T | F |
| 12. A judgment is not a lien on a mortgage. | T | F |
| 13. A first mortgage is always a first lien. | T | F |
| 14. Where a debtor owns two properties of equal value, a judgment creditor can be compelled to accept one half of the debt and release one property. | T | F |
| 15. A DSB judgment is one entered by confession. | T | F |
| 16. Where there are a number of judgment creditors, the one who institutes foreclosure is paid first out of the proceeds. | T | F |
| 17. Where one joint obligor dies, the note can be entered as a judgment against the survivor. | T | F |
| 18. Death of the obligor prevents a judgment being confessed against the decedent. | T | F |
| 19. Execution may not be issued upon a judgment against a municipality. | T | F |
| 20. A property can never be sold where there is a judgment against it. | T | F |
| 21. A judgment entered by confession against a minor is void. | T | F |
| 22. A leasehold is subject to the lien of a judgment. | T | F |
| 23. A judgment against a husband will operate as a lien against property owned by husband and wife. | T | F |
| 24. A judgment is protected by the recording acts. | T | F |
| 25. A judgment is void after the lien period has expired. | T | F |
| 26. A judgment is non-assignable. | T | F |
| 27. Previous payment to the creditor is a good defense to suit by the assignee of the judgment. | T | F |
| 28. Any excess of funds realized at a foreclosure sale belongs to the owner. | T | F |
| 29. After a "notice of completion" is properly filed, no one can record a valid mechanic's lien. | T | F |
| 30. A chattel is a mortgage on personal property. | T | F |
| 31. A right to or interest in real estate that diminishes its value is called an encumbrance. | T | F |
| 32. Tax liens have priority over a previously recorded trust deed or mortgage. | T | F |
| 33. A recorded easement is considered an encumbrance but not a lien. | T | F |
| 34. The obligee is the creditor. | T | F |
| 35. Negotiability is the same as assignability. | T | F |
| 36. Property conveyed to a close relative in contemplation of a judgment, but before the judgment is actually entered, can be set aside. | T | F |
| 37. A judgment entered against the seller of real estate, but before the deed to the purchaser is recorded, will be a lien against the real estate. | T | F |
| 38. Judgments are only entered in the courts of the county. | T | F |
| 39. A verdict before an alderman or Justice of the Peace constitutes a judgment. | T | F |
| 40. Judgments entered on a note accompanying a mortgage date from the date when the mortgage was executed. | T | F |
| 41. The effect of a mortgage is to create a lien. | T | F |
| 42. An <i>in rem</i> judgment is a specific lien against one property only. | T | F |
| 43. The lien of a judgment is 20 years. | T | F |

- | | | |
|---|---|---|
| 44. When a suit for damages is filed, the plaintiff has a cautionary judgment against the defendant. | T | F |
| 45. A suit in equity for real estate operates as a cloud against the real estate when the suit is filed. | T | F |
| 46. Judgments bear interest at five per cent until paid. | T | F |
| 47. Upon payment of a judgment, the creditor is required to satisfy the records. | T | F |
| 48. Where the judgment has been assigned of record, the debtor must pay the assignee and not the original creditor, even if he has not been notified of the assignment. | T | F |
| 49. Liens against real estate are satisfied in the order in which they are executed. | T | F |
| 50. A property against which a judgment has been entered, must be sold within ten years or the judgment will be void. | T | F |
| 51. Property sold on a first mortgage which is a first lien will discharge all judgments against the same property. | T | F |
| 52. A judgment has priority over all other liens. | T | F |
| 53. An "encumbrance" is always a "lien." | T | F |
| 54. The lien of a trust deed is released by the recording of a properly executed deed of reconveyance. | T | F |
| 55. Judgment entered against Catherine Lynn is a good lien against property owned by Katherine Lynn, who is the same person. | T | F |
| 56. The lien of a judgment does not have priority over all other liens. | T | F |
| 57. A real estate broker may file a lien for his commission against the property sold, if he is not paid. | T | F |
| 58. Lis pendens is a form of public notice filed against a named property that a suit is about to be filed. | T | F |
| 59. A contractor who is not paid may file an injunction against the subject property. | T | F |
| 60. A judgment is always an encumbrance against all the property the defendant owns. | T | F |
| 61. A property can be sold even if there are judgments against it. | T | F |
| 62. Current unpaid real estate taxes constitute a lien against the real estate. | T | F |
| 63. In Wisconsin, homestead is exempt from execution to the extent of \$5,000. | T | F |
| 64. A judgment entered by a Justice of the Peace in favor of a plaintiff constitutes a lien. | T | F |
| 65. A defendant's automobile may be sold to satisfy a judgment. | T | F |
| 66. A firm furnishing paint to an owner in the repair of his home, may file a mechanic's lien to protect its claim. | T | F |
| 67. When a deed of trust note is secured by a deed of trust, the latter but not the former should be recorded. | T | F |

Multiple Choice

(Answers to this section are on page 706.)

1. Judgments are entered by
 - (a) an Alderman.
 - (b) court of competent jurisdiction.
 - (c) real estate Commission.
 - (d) a Justice of the Peace.
2. The majority of judgments are entered by
 - (a) court decisions.
 - (b) default.
 - (c) confession.
 - (d) insurance companies.
3. When a firm furnishes materials for a house, and is not paid, it may file
 - (a) a mechanic's lien.

- (b) a deficiency judgment.
 - (c) a lis pendens.
 - (d) an estoppel certificate.
4. A deal is closed on February 15, 1978 and the buyer, Jones, does not record the deed until April 24, 1978. A judgment for \$1,200 is filed against the grantor, Adams, on April 19, 1978. The judgment
- (a) is a lien against the property.
 - (b) is invalid against the property.
 - (c) Jones can rescind the deal.
 - (d) constitutes a judgment inchoate.
5. A judgment entered of record, is a lien on the debtor's
- (a) automobile.
 - (b) residence.
 - (c) bank account.
 - (d) wages.
6. A judgment takes effect from the time
- (a) the debt is incurred.
 - (b) suit is decided.
 - (c) verdict of a jury is given.
 - (d) it is entered of record.
7. If a debtor owns three pieces of real estate and a judgment is entered against him, it will be a lien against
- (a) the property first acquired by him.
 - (b) the property last acquired by him.
 - (c) all three properties.
 - (d) homestead property only.
8. The period of lien of the judgment is determined by
- (a) statute of state.
 - (b) law of Congress.
 - (c) plaintiff.
 - (d) court.
9. The type of property of a debtor which can be sold on execution of a judgment is
- (a) real property only.
 - (b) real or personal.
 - (c) incorporeal real estate.
 - (d) personal property only.
10. Holder of a cognitive or judgment note can confess judgment
- (a) after default only.
 - (b) after execution and delivery of the note.
 - (c) after 30 days default.
 - (d) decree of court.
11. Judgment notes can be confessed for a debtor by
- (a) an attorney-in-fact.
 - (b) an agent.
 - (c) a Justice of the Peace.
 - (d) an attorney at law.
12. A mechanic's lien can be filed against an owner by
- (a) a salesman against a broker.
 - (b) a lumber company furnishing materials.
 - (c) an abstractor.
 - (d) the building superintendent after completion of building.
13. A judgment entered against a person who owns property would not be good against which one of the following:
- (a) a life estate.
 - (b) tenancy in common.

- (c) leasehold.
- (d) estate by the entireties.
- 14. A judgment was entered against John Stone on May 3, 1969. The judgment would *not* be a lien against which one of the following:
 - (a) property purchased on April 25, 1960.
 - (b) property acquired by devise on November 25, 1968.
 - (c) property purchased on Jan. 14, 1972.
 - (d) property acquired by gift on March 17, 1969.
- 15. Property acquired by a debtor after judgment has been entered against him will be lienied by the issuance of
 - (a) an action to quiet title.
 - (b) *scire facias* proceedings.
 - (c) filing a civil suit in assumpsit.
 - (d) suit to annul a debtor's exemption.
- 16. Postponing a judgment, instead of releasing a judgment, benefits
 - (a) the debtor.
 - (b) no one, since they are the same.
 - (c) the creditor.
 - (d) a third party.
- 17. A judgment may be satisfied by sale of personal property through
 - (a) levy and attachment proceedings.
 - (b) filing a creditor's bill.
 - (c) bill of interpleader.
 - (d) sequestration proceedings.
- 18. A judgment *in rem* binds only debtor's
 - (a) personal property.
 - (b) real property.
 - (c) household effects and furniture.
 - (d) automobile.
- 19. Judgments prevent the debtor's property from being
 - (a) sold.
 - (b) leased.
 - (c) mortgaged.
 - (d) none of these.
- 20. Adams has a judgment against Austin dated March 21, 1978. Austin owns two properties, designated Tracts 1 and 2. Clark holds a mortgage against Tract 1, dated April 24, 1975. Adams, in order to satisfy his judgment must proceed
 - (a) against Tract 1.
 - (b) against Tract 2.
 - (c) must wait until Austin sells Tract 1.
 - (d) must wait until mortgage is paid or foreclosed.
- 21. Alberts deeds property to Forster on January 2, 1978. The deed is recorded on January 16, 1978. Boone enters judgment against Alberts on January 23, 1978. Which of the following is true?
 - (a) The judgment is now a lien against Forster.
 - (b) The judgment is a lien against the subject property.
 - (c) The deed is invalid.
 - (d) Forster can have the sale rescinded.
- 22. With a judgment entered on December 6, 1977, a first mortgage entered on January 21, 1978, a second mortgage entered on February 14, 1978, and a second judgment entered on March 3, 1978, in a foreclosure action brought by the second judgment creditor, the first judgment creditor would be paid
 - (a) first.
 - (b) second.
 - (c) third.

- (d) fourth.
23. Where, at a sheriff's sale upon a delinquent mortgage, the amount realized is more than the indebtedness, the excess belongs to
- (a) the mortgagor.
 - (b) the mortgagee.
 - (c) sheriff's office.
 - (d) the purchaser.
24. Stevens, a retail shoe merchant, entered judgment for \$3,000 upon a note given to him by Hilton, a wholesale shoe dealer, on March 21, 1977, for a loan. On May 3, 1977, Stevens purchased shoes from Hilton for \$850, and agreed that Hilton could apply this sum on the debt due him by Hilton. Stevens assigned his judgment to Rhodes on May 23, 1977. The assignment is recorded. Hilton tenders \$2,150 to Rhodes, in full satisfaction of the debt, which Rhodes refuses to accept. Under these circumstances:
- I. Rhodes can recover only \$2,150 from Hilton.
 - II. Rhodes can recover the \$850 from Stevens.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
25. A scire facias (sci fa) proceeding is brought
- I. to revive a judgment after the statutory lien period has expired.
 - II. in order to attach the lien of the judgment against property, acquired by the debtor, after the judgment was entered.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
26. John Steele delivered a deed to Harry Taylor on January 27, 1978. It is left the same day by Taylor in the office of Recorder of Deeds for recording. Due to negligence of an employee, it is not recorded in the proper Deed Book volume until February 7, 1978. On February 1, 1978, two judgments are entered against John Steele for \$3,200 and \$1,500. Under these circumstances:
- I. the judgments are liens against the property.
 - II. the judgments are in personam liens against John Steele.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
27. A debenture is a
- I. writ of attachment.
 - II. debt evidenced by a bond.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
28. An agreement to waive rights of a judgment creditor in favor of a mortgagee is
- I. subordination.
 - II. subjugation.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
29. An attachment is
- (a) the physical seizure of the debtor.
 - (b) an annex to an existing structure.

- (c) a court decree, authorizing seizure of property for satisfaction of a judgment.
 - (d) filial devotion to owner of property.
30. Which of the following creates a personal obligation, rather than one that creates a lien against real property?
- (a) A promissory note.
 - (b) A recorded agreement of sale.
 - (c) A tax lien.
 - (d) A mortgage on real estate.
31. John Hill owns a property on December 9, 1976. On that date he is involved in a serious automobile accident. The other party, Holmes, enters suit on December 30, 1976. On January 8, 1977, Hill deeds the property to his wife, Jane Hill. On January 9, 1977, a judgment is entered in favor of the plaintiff for \$9,250 against Hill. Under these circumstances, Holmes
- I. can satisfy the judgment by sale of the property, then owned by Jane Hill.
 - II. must first attach and sell any other property of John Hill, such as automobile, stocks, as well as seize bank accounts.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
32. James Downes and Margaret Downes, his wife, own their residence in Philadelphia. As a result of an automobile accident, Thomas Quinn obtained a judgment against James Downes on February 13, 1978, for \$11,000. James Downes and Margaret Downes sell their residence to Frank Gordon on February 27, 1978 for \$18,200 cash, and they move to Phoenix, Arizona. Mr. and Mrs. Downes purchase a home in Phoenix for \$22,000. Under these facts,
- I. the judgment is a lien against the property now owned by Gordon.
 - II. the judgment can now be entered as a valid lien against the Phoenix property.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
33. Willard Fry and Margaret Fry, his wife, own their home. A judgment is entered by Allen Crowe against Willard Fry on February 13, 1978, for \$1,400. Margaret Fry died on April 4, 1978. Under these facts,
- I. Crowe can now sell the residence to satisfy his judgment.
 - II. Mrs. Fry's two children, from a prior marriage, can claim her dower right in the property.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
34. On April 17, 1978, you purchased a home from Lloyd, and you depart the same day for vacation, returning on April 30, 1978, at which time you record the deed. On April 21, 1978, Biggs Mantle & Tile Co. filed a lien for material and work completed on March 19, 1978. This lien would
- (a) be a lien against the home you purchased.
 - (b) be a lien only against other property owned by Lloyd.
 - (c) apply against any future purchaser of the home.
 - (d) have no effect.

LANDLORD AND TENANT

A LEASE is a non-freehold, or as is often stated, it is less than a freehold estate: "a leasehold." It is an estate for a specified period of time and upon expiration of the lease term, the estate terminates.

The relationship of landlord and tenant is that which arises from a contract, express or implied, by which one person occupies the real property of another with his permission and in subordination to his rights; the occupant being known as the "tenant" and the person in subordination to whom he occupies is the "landlord." *McNeill v. McNeill*, 456 S.W. 2d 800 (Mo. App. 1970). It is created by a lease. The two parties to a lease are the lessor, who is the owner, and the lessee, who obtains possession of the premises for a specified period of time. The term landlord is used interchangeably with the term lessor, and the same is true of the lessee, who is often referred to as the tenant. The lessor's interest is called a reversion. Strictly speaking, the two prime parties to the lease should be called lessor and lessee. Where the lessee sublets a portion of the leased premises to another person, he becomes the landlord and the sub-lessee is the tenant. However, in everyday parlance among laymen and licensees, the relationship of lessor-lessee is called a landlord-tenant relationship.

The lease contract, voluntarily entered into by the parties, largely determines the law by which the parties are governed. The lease contract may be verbal or in writing. The verbal lease is just as binding and of as great legal efficacy as the written contract, providing that the term of the lease is not in excess of the period prescribed by the Statute of Frauds. The Statute of Frauds requires certain contracts to be in writing, particularly those relating to real estate. Contracts which cannot be performed within one year, as a rule, must be in writing. Thus, a lease for more than one year, in most states, as in California, must be in writing in order to be enforceable.

In an action to collect rents under a three-year lease, signed only by the *lessee*, for property in California, the court held that the lease violated the California Statute of Frauds in that a lease for more than one year must be in writing and signed by the party to be charged (lessor). The lessee, a resident of Oregon, where the suit was brought, could not recover: *Palmer v. Wheeler*, 481 P. 2d 68 (Ore. 1971). The period runs from the date when the contract is entered into, rather than from the date the lease term commences. In Pennsylvania, a lease in excess of three years must be in writing. For obvious reasons, a written lease is preferable to a verbal one. The tenure of human life is uncertain, and one or both of the parties to the contract may die during its term. In case of controversy or litigation, the surviving party would not be permitted to testify as he is a party in interest, and the other party is deceased.

Where lessee occupies premises under oral lease fixing no duration, either lessor or lessee can terminate lease at expiration of any month by giving written notice: *Branch v. Watkins Realty Corp.*, 289 So. 2d 381 (La. App. 1973).

The lease must be definite, and free from ambiguity: *Russell v. Valentine*, 376 P. 2d 548 (Utah 1962).

An agreement to contract for lease in the future must be definite and specific as to terms of the lease; otherwise it is unenforceable. A contract to lease which did not fix rental, and which was conditioned upon obtaining financing and adequate parking facilities (which were not met), was unenforceable: *Kapetan v. Kelso*, 481 P. 2d 24 (Wash. App. 1971).

The essence of a lease is the payment of rent. A lease may be defined as a contract, oral or written, for the *possession* of lands and tenements, on the one hand, in return for a recompense of rent or other income, on the other hand. A license is a personal privilege. It is not an estate in land, and it is not usually assignable. In deciding whether a writing was a lease or a license for pin ball machines, the court held that the test is whether exclusive possession of premises is given or merely possession to use: *Timmons v. Cropper*, 172 A. 2d 757 (Dela. 1961). A license may be termed a tenancy at will, which can be terminated at any time.

Term

A lease must be for a term; there must be a certain beginning and a certain ending. Otherwise, a tenancy at will is created.

A tenancy for years is one for a fixed period of time, whether it is a month, year, or longer. A tenancy from year to year or month to month is one that continues for an indefinite number of definite terms. The estate continues indefinitely until one of the parties elects to terminate it by giving proper notice. Usually the lease is for a specified term, one month or one year.

Generally, when a lease for a certain term expires, a lessee is not entitled to crops planted at such time that they do not and cannot mature before expiration of the lease; nevertheless, a lessee is entitled to the crop, where lessor knew the crop could not mature during the term and still consented to acquiesce in the planting or cultivating: *Beken v. Elster*, 503 S.W. 2d 408 (Texas 1973).

Holding over

An implied renewal of a tenancy by the holding over of the tenant after the expiration of the lease, is presumed in case nothing is said in the lease to the contrary. All the terms and conditions in the former lease, therefore, will continue in force. Where the lease is for one year, from May 1, 1973 to April 30, 1974, it expires at 12:01 A.M. on May 1, 1974. Where the tenant holds over and continues to occupy the premises during all of the day of May 2, 1974, he will be liable for the whole rent for the second year. It would be no defense to claim that he occupied the premises during May 2nd under a mistake of law as to the time the lease expired. This would be the case even though the lessee previously had given written notice of his intention to quit the premises. Of course, a lessee cannot stay over after the expiration of the lease term for an additional few days and then claim he is entitled to possession for an additional year. The holding over must be *lawful*, i.e., with the consent of the lessor.

A tenant who holds over after expiration of the lease term is liable for reasonable rent. Under Florida law, the tenant, may, in fact, be liable for double rent: *Nelson v. Growers Ford Tractor Co.*, 282 So. 66 (Fla. App. 1973).

Tenant at will; tenant at sufferance

A tenancy at will is in the nature of a license, to be ended at the instance of the owner. A tenant at sufferance is no tenant at all since he holds over without the

consent of the landlord, which is essential to a landlord-tenant relationship. He is a wrongdoer and the lessor may bring an action in ejectment to recover possession: *Kilbourne v. Forester*, 464 S.W. 2d 770 (Texas 1971).

In the case of *Custis v. Klein*, 127 A. 2d 268 (D.C. 1962), the court held in a lease, for month to month, notice given in April to vacate premises on April 30 was defective and lessee was entitled to possession for full month of May.

In the case of *Housing Authority of Pittsburgh v. Turner*, 191 A. 2d 869 (Pa. 1963), the termination of a month-to-month lease by Housing Authority, without giving any reason, was held no abuse of due process. Where the lease is for five years and the tenant remains in possession after the expiration of that term with the consent of the lessor, he cannot claim a new term for *five* years. The lease would be extended only for an additional *one* year, and so on from year to year until terminated by either party. The lease may be for one year, with a clause in the contract that if the tenant holds over lawfully, it shall be in force for another *month* and so on from month to month. The lease provision determines the rights of the parties.

The lease may be automatically continued in force in the absence of written notice of termination required under the lease, as follows:

From and after the expiration of the term hereby created, this lease and all its terms, provisions, covenants, confessions, and remedies shall be deemed to be renewed and in force for another year, and so on from year to year unless either party shall have given to the other written notice to terminate said tenancy sixty (60) days prior to the expiration of the current term.

Parties

The names of the parties are inserted in the lease for the purpose of identification. A mistake or omission in setting forth the parties, if it is not material or does not cast doubt upon the parties intended, will have no effect upon the validity of the contract. Generally speaking, anyone who is capable of making a contract is capable of making a lease. A lease may be executed by the owner of the property himself or by a properly authorized agent acting in his behalf. If the lease must be in writing under the Statute of Frauds, then the agent's *authority* to execute the lease must be *in writing*. A lease signed and sealed by an agent in his *own name alone* would be open to attack by lessor or lessee. The execution of a lease by an agent must be carefully made. An agent may execute a lease, *as agent*, for an undisclosed principal, in which case the agent is considered as the lessor. It would be signed "John Steele, agent." The best execution, from the standpoint of the agent, is to include the name of the lessor, as

Adam Taylor
by John Steele, agent

An agent who is appointed merely to collect rents has no authority to negotiate a lease for the owner.

If a *minor* leases land, the same rules apply as in the case of any other contract executed under a similar condition. Such a lease, in other words, is not void but only voidable by the minor, and may be disaffirmed by him during his minority or within a reasonable time after attaining his majority. A *guardian* of a minor stands, however, in exactly the same position that he would had he himself owned the property, so far as his power to lease is concerned. He has been appointed for the purpose of administering the affairs of the minor, and consequently possesses all the

power which may be necessary for executing the lease. In the same way, a *trustee* may grant leases which are unimpeachable so long as the trustee has remained within the powers granted to him by the deed of trust. The trust instrument should be examined to ascertain the extent of the trustee's authority. An *administrator* cannot lease. He has been appointed for the purpose of winding up the estate and has nothing to do with the renting of real estate. An *executor*, for the same reason, unless he has been made a trustee of the real estate, cannot lease any of the estate property. A *married woman* has full capacity to execute a lease for property owned by her. Where the property is owned by the entireties, in the name of husband and wife, either spouse can execute a valid lease upon the property owned by both. The lease benefits inure to both spouses.

It is important to note that the wife is for all practical purposes a co-beneficiary of the lease. An owner in common has no authority to bind his co-owners by a lease. In order to bind all, the lease must be executed by *all* the owners: *Needleman v. American Clothing Co. Inc.*, 63 A. 2d 201 (Vt. 1949).

Description

In making a lease it is not necessary to insert a minute description of the premises which are the subject of the property. The lease should provide that the premises are leased "as is"; that is, in their present condition. If the premises are in good repair, a statement to that effect should also be included. In case of commercial or industrial property, a full description should be used. In renting a furnished house, it is important to have a list of the furniture or other articles which are to pass with the house, attached to the lease. A clause should be inserted giving the lessor the right to make an examination of the articles in order to ascertain the condition of the furniture, which the tenant is bound to preserve in good order.

Warranties

Upon execution of a lease, there is an implied warranty that the condition of the premises described in the lease shall remain the same between the time of the execution of the lease and the beginning of the term. If a material change has taken place in the character of the premises, the tenant is not bound to take possession, for the premises tendered are not those described in the lease. Where a landlord rented a city property, and, before the lessee took possession at the commencement of the term, he allowed a third party to dump earth on the premises without the consent of the tenant and thereby changed the character of the leasehold, the landlord could not recover in an action for rent.

A lessee should require the lessor to covenant that the tenant will obtain possession of the premises at the commencement of the term, for otherwise the tenant can recover only damages for the delay in obtaining possession. Frequently, a lessee cannot obtain possession because of the unlawful holding over of the previous lessee. In a commercial establishment, this may result in considerable damage to the new tenant. Whether the new tenant can consider the breach sufficient to terminate the lease depends upon the circumstances. Adams' lease of dairy store premises from Brown had a 90-day sales clause. Brown sold the property to Clement, who immediately leased the premises to Denton for a dairy store at a considerably higher rental. The lease term was for five years, beginning February 15, 1978. Adams leased other premises about a half-block distant but could not get possession until May 1, 1978. On April 1, 1978, Denton notified Clement that he would not honor the lease because of Clement's inability to give him possession. Denton

claimed that he suffered irreparable harm since he could not take possession until after Adams was able to enter in active competition with him. Denton expected to obtain a considerable portion of Adams' present trade, which *induced* him to sign the lease and was, in a sense, a condition precedent. Here, possession on February 15th was distinctly understood as a material element in the contract and Clement could not hold Denton to the lease. Clement could have protected himself from this situation by a provision that:

Lessor or his agent shall not be liable in damages, or otherwise, for failure to deliver possession of the demised premises to the lessee at the commencement of the term, where such failure is due to the unlawful holding over by a prior tenant or occupant; this lease shall, nevertheless, remain in full force and effect, with an abatement of rent to the lessee until the date possession is made available to him.

Eight months' delay in giving tenant possession, due to failure to complete building, permitted tenant to rescind the lease: *Hartwig v. 65 Realty Co.*, 324 N.Y. S. 2d 567 (1971).

Rent

One of the characteristics which distinguishes a lease from a license is the payment of rent. Rent may be payable not only in money but in provisions, chattels, or labor. When no time is fixed for the payment of rent in a lease for a term, such as a year, the rent is not payable until the end of the term. If a specified time is provided, the rent is due and payable at that date.

In most cases, the lease contains a clause stipulating that the rent shall be paid monthly in advance. It is considered good practice to insert an express covenant in the lease by which the tenant binds himself to pay the amount agreed upon. This is valuable because of the fact that while an implied agreement can be presumed in all cases for the tenant to pay the agreed rental, yet if there is an express covenant and the tenant should subsequently assign the lease, even with the lessor's consent, the first tenant would still be liable for the rent. The only way in which he can be relieved from this responsibility is by the formal release by the landlord of the tenant. This practically amounts to the cancellation of the first lease and the creation of a second agreement with the new tenant. If the tenant is of questionable financial responsibility, a landlord can protect himself by insisting that the tenant provide a satisfactory surety to guarantee the terms of the lease; or the landlord may require that the tenant put up a substantial sum of money as evidence of good faith, which shall be applied to the *rent for the last several months of the lease term*.

In the case of *Martinique Realty Corp. v. Hull*, 166 A. 2d 803 (N.J. 1960), the tenant had made advance payment of rent for the full term. The property was sold during the term. The court held that it was the duty of the purchaser to ascertain the lease arrangement, and that he was bound by the pre-paid rentals.

It is also good practice to insert a clause in the lease of an apartment or furnished house, that all or part of said deposit may be used by the lessor to compensate him for any damage caused by the lessee to the furniture or premises during his occupancy.

It is a principle of law that a leased store will remain in the same condition between the date when the lease was signed and when the lease term begins.

Security Deposits

It is a general practice, in urban areas, for the landlord, upon signing a lease for an apartment, to require the tenant to pay a full month's rent as a security deposit.

This deposit is in addition to a month's rent, which the landlord may require as a guarantee for payment of rent during the term of the lease, which is applied to the last month's rent. The security deposit is held by the landlord until the tenant vacates the apartment. It is intended to reimburse the landlord for any damage to the premises during the tenant's occupancy. The tenant will also be charged, as an offset to the deposit, for any expense incurred by the landlord, in "cleaning up" the premises, or in obtaining a new tenant during the unexpired term of the lease: *Pyrimid Enterprises, Inc. v. Amadeo*, 294 N.E. 2d 713 (Ill. App. 1973). It also acts as an incentive to the tenant to keep the premises in good order, reasonable wear and tear excepted.

The question arises—who is entitled to interest on the security deposit, held by the landlord during the term of the lease, which is often successively renewed for a number of years? The Illinois law provides that the lessee is entitled to four per cent interest upon deposit money held for more than six months. The New Jersey law provides for interest, less one per cent to the landlord for administration expenses. In the absence of a statute, the lease should contain a provision as to which party is entitled to interest on the deposit money.

Commercial use of the premises

The particular commercial use to which the leased premises are to be put should be spelled out with clarity. While courts will not make contracts for the parties, they will lend their aid in ascertaining the *intention* of the parties from the language used in the lease instrument.

In the case of *Anderson v. Busoda*, 180 A. 2d 130 (D.C.), the lease prohibited the use of the premises "for any other purpose than laundry service." The tenant, after several months on the premises, added a "dry cleaning service." He changed the name from "Normandy Laundry" to "Astro Laundry and Cleaners." The court held there was a violation of the lease, pointing out that, "In ordinary and popular usage there is a vast and distinct difference between laundry service and dry cleaning service, both in the methods used and the results accomplished." It is obvious that the "use" clause is of great importance in shopping center leases.

Shopping center leases

The preparation of leases in shopping center developments calls for expert knowledge in that particular area of real estate practice. The services of an experienced real estate attorney are strongly recommended if the owner or developer of the shopping area is not knowledgeable in the field. Practically all leases provide a stated minimum monthly rental payable up to a certain volume of sales. Then, the rental is based upon a percentage of gross sales—the percentage decreases as the volume of gross sales increases. The lease usually provides that the lessee shall pay, as additional rent, increases in taxes upon the subject property during the lease term, a provision for a renewal of the lease, at the option of the lessee upon new terms of rental, and the lessee's liability for increased insurance premiums due to his occupancy as well as contributions according to a formula, for his participation in any program for promotion or advertising the particular shopping area for the advantage of all tenants.

In order to promote harmony, sightliness and good business practices, the lease will embody necessary rules as to days and hours of operation, parking for employees, types of fronts, signs, awnings, outside displays, deliveries and trash collections. The lessor is responsible for the location, marking and maintenance of the parking

areas, policing, lighting and cleaning. It is customarily found that the tenants in a large shopping center will implement the rules embodied in a lease, by organization of all the lessees into a Merchants Association to their mutual advantage.

Restricting competition

Restrictive covenants in a lease barring competition from a similar business are strictly construed: *Howard D. Johnson Co. v. Parkside Development Corp.*, 384 N.E. 2d 656 (Ind. 1976).

A shopping center leased a store for a retail bakery, donut shop and snack bar. The lease contained a prohibition against a lease for similar use within a designated distance. The lessee, later, received permission to sell sandwiches and other allied items usually sold. Subsequently, an adjoining vacant store was leased for a Mexican-type restaurant. The court held that the restaurant use violated the first lease: *Anderson v. Blondo Plaza, Inc.*, 186 N.W. 2d 114 (Neb. 1971); *Carousel Snack Bars v. Crown Construction Co.*, 439 F.2d 280 (Pa. 1971).

Apartment leases

It is not unusual in leasing a unit in an apartment building to implement the lease contract by a set of rules and regulations, which, by reference to them, become a part of the lease proper. The rules are intended to prevent a tenant from becoming obnoxious or a nuisance to other tenants or to the public.

One prohibition, in particular, prohibits the maintenance of any domestic or wild animal in or about the premises except with the written consent of the lessor. In the case of *Margolin et al. v. Richards*, 70 D & C 380 (Pa. 1949), confession for possession was entered against a tenant who kept a small dog in his apartment in a recently completed building. Several tenants had complained. The lessee contended that before he signed the lease, the building manager told him that "he might surreptitiously bring the dog in and out the cellar door." The court held that "there was nothing to indicate the manager had any authority to waive any provision in the lease, and, furthermore, whatever oral agreements or conversations were made before signing a contract are merged in the written agreement."

The importance of a lease of an apartment is not to create a tenurial relationship, but rather to arrange the leasing of a habitable dwelling. This means that there are no latent defects in facilities vital to the use of the property for residential purposes and that these essential facilities will remain during the entire term in a condition which will make the property livable: *Marini v. Ireland*, 265 A. 2d 526 (N.J. 1970). The very object of the letting was to furnish the defendant with quarters suitable for living purposes. This is what the landlord at least impliedly (if not expressly) represented he had available and what the tenant was seeking. "The warranty of habitability which we hold exists in such a case is imposed by law on the basis of public policy. It arises by operation of law because of the relationship of the parties, the nature of the transaction, and the surrounding circumstances." In *Kline v. Burns*, 276 A. 2d 248 (N.H. 1971), a tenant brought an action against his landlord to recover all rent paid during occupancy on grounds that premises were in violation of the city housing code. The landlord then brought an action for possession and to recover the unpaid rent. Decided in favor of tenant.

Adoption of this view makes available to the tenant the basic contract remedies of damages, reformation and rescission: *Lemle v. Breeden*, 51 Hawaii 426 (1969). The tenant can obtain relief by instituting an action for breach of warranty or by offsetting his damages against a claim made against him by the landlord.

Increased adoption of implied warranty doctrine

The trend of the implied warranty principle of law has been held, in a number of jurisdictions, to apply to leasing dwellings and apartments. The thrust of these decisions is that the leased premises must be habitable. The opinion of Justice Tobriner, in the case of *Green v. The Superior Court of the City and County of San Francisco*, 517 P. 2d 1168 (Cal. 1974), gives a very lucid and comprehensive discussion for justification of the implied warranty of habitability for residential leases. The opinion states:

Under traditional common law doctrine, long followed in California, a landlord was under no duty to maintain leased dwellings in habitable condition during the term of the lease. In the past several years, however, the highest courts of a rapidly growing number of states and the District of Columbia have re-examined the bases of the old common law rule and have uniformly determined that it no longer corresponds to the realities of the modern urban landlord-tenant relationship. Accordingly, each of these jurisdictions has discarded the old common law rule and has adopted an implied warranty of habitability for residential leases.¹ In June 1972, the California Court of Appeal reviewed this emerging out-of-state precedent in the case of *Hinson v. Delis*, (1972) 26 Cal. App. 3d 62, 102 Cal. Rptr. 661, and, persuaded by the reasoning of these decisions, held that a warranty of habitability is implied by law in residential leases in California. We granted a hearing in the instant case, and a companion case, to consider the Hinson decision and to determine whether the breach of such implied warranty may be raised as a defense by a tenant in an unlawful detainer action.

For the reasons discussed below, we have determined that the Hinson court properly recognized a common law implied warranty of habitability in residential leases in California, and we conclude that the breach of such warranty may be raised as a defense in an unlawful detainer action.

First, as the recent line of out-of-state cases comprehensively demonstrate, the factual and legal premises underlying the original common law rule in this area have long ceased to exist; continued adherence to the time-worn doctrine conflicts with the expectations and demands of the contemporary landlord-tenant relationship and with modern legal principles in analogous fields. To remain viable, the common law must reflect the realities of present day society; an implied warranty of habitability in residential leases must therefore be recognized.

Second, we shall point out that the statutory "repair and deduct" provisions of Civil Code section 1941 et seq. do not preclude this development in the common law, for such enactments were never intended to be the exclusive remedy for tenants but have always been viewed as complementary to existing common law rights.

Finally, we have concluded that a landlord's breach of this warranty of habitability may be raised as a defense in an unlawful detainer action. Past California cases have established that a defendant in an unlawful detainer action may raise any affirmative defense which, if established, will preserve the tenant's possession of the premises. As we shall explain, a landlord's breach of a warranty of habitability directly relates to whether any rent is "due and owing" by the tenant; hence, such breach may be determinative of whether the landlord or tenant is entitled to possession of the premises upon nonpayment of rent. Accordingly, the tenant may properly raise the issue of warranty of habitability in an unlawful detainer action. . . .

In the case of the lease of an apartment, it is interesting to note that the New Hampshire Supreme Court also has pronounced principles, which represent a radi-

¹ See *Pines v. Persson*, (1961) 14 Wis. 2d 590, 111 N.W. 2d 409; *Lemle v. Breeden*, (1969) 51 Haw. 426, 462 P. 2d 470; *Javins v. First National Realty Corp.*, (1970) 138 U.S. App. D.C. 369, 428 F. 2d 1071, cert. den. 400 U.S. 925, 91 S. Ct. 186, 27 L. Ed. 2d 185; *Marini v. Ireland*, (1970) 56 N.J. 130, 265 A. 2d 526; *Kline v. Burns*, (1971) 111 N.H. 87, 276 A. 2d 248; *Jack Spring, Inc. v. Little*, (1972) 50 Ill. 2d 351, 280 N.E. 2d 208; *Mease v. Fox*, (1972) Iowa, 200 N.W. 2d 791; *Boston Housing Authority v. Hemingway*, (1973) Mass., 293 N.E. 2d 831.

cal departure from the common law. In the case of *Kline v. Burns*, 276 A. 2d 248 (N.H. 1971), a tenant brought an action against his landlord to recover all rent paid during his occupancy of an apartment on the grounds that the premises were in violation of the City Housing Code. The landlord, in turn, brought an action for possession and to recover unpaid rent. The language of the Supreme Court is significant. The Court said:

The following are factors to be considered in the appraisal of the legal principles to be applied to the present day relationship of landlord and tenant: (1) Our legislature has recognized (RSA ch. 48-A) that the public welfare requires that dwellings offered for rental be at the beginning, and continue during the tenancy to be, in a safe condition and fit for human habitation. (2) Common experience demonstrates that the landlord has a much better knowledge of the conditions of the premises than the tenant. Furthermore housing code requirements and violations are usually known or made known to the landlord. *Marini v. Ireland*, 56 N.J. 130, 142, 265 A. 2d 526, 533 (1970); 44 Denver L.Q., 387, 398 (1967); see RSA 48-A:3(III) (supp.). It follows that the landlord is in a better position to know of latent defects, such as some of those involved in this case, which might go unnoticed by the tenant who rarely has sufficient knowledge or expertise to see or discover defects in wiring, fusing, or venting of gas appliances or furnaces. See *Reste Realty Corp. v. Cooper*, 53 N.J. 444, 452, 251 A. 2d 268, 272 (1969). (3) It is appropriate that the landlord who will retain ownership of the premises and any permanent improvements should bear the cost of repairs necessary to make the premises safe and fit for human habitation. 1 American Law of Property s. 3.78, at 347-48 (1952). In today's housing market, the landlord is usually in a much better bargaining position than the tenant which results in rental of poor housing in violation of public policy. A. B. Foundation, Model Residential Landlord-Tenant Code 9 (Tent. Draft 1969); 50 B.U.I. Rev. 24, 38, 39 (1970).

In our opinion the above considerations demonstrate convincingly that in a rental of an apartment as a dwelling unit, be it a written or oral lease, for a specified time or at will, there is an implied warranty of habitability by the landlord that the apartment is habitable and fit for living. . . . *Marini v. Ireland*, 56 N.J. 130, 144, 265 A. 2d 526, 533 (1970); *Javins v. First Nat'l Realty Corp. supra*; *Lemle v. Breeden*, 51 Hawaii 426, 433, 462 P. 2d 470, 474 (1969); *Lund v. MacArthur*, 51 Hawaii 473, 475, 482 P. 2d 461, 463 (1969). The warranty of habitability which we hold exists in such a case is imposed by law on the basis of public policy. It arises by operation of law because of the relationship of the parties, the nature of the transaction, and the surrounding circumstances. . . .

However, the Colorado Supreme Court rejected the trend of *implied* habitability in the case of *Blackwell v. Del Bosco*, 558 P. 2d 568 (1977), indicating that tenant relief should come from the legislature, rather than from the Courts. Implied warranty of habitability does not apply to commercial buildings: *Dawson Industries, Inc. v. Godley Construction Co., Inc.* 224 S.E. 2d 266 (N.C. 1976).

In the case of *Mannie Joseph, Inc. v. Stewart*, 335 N.Y. S. 2d 709 (1972), the owner refused to make repairs in a tenement building, so that the tenants would move, and he could re-lease the units more profitably. Mrs. Stewart failed to move, although she suffered from absence of heat, gas, no hot water, and other inconveniences. She stopped paying rent, and the owner sued for delinquent rent. The court refused to allow a recovery of rent. The cases, heretofore, generally hold that the tenant's remedy in these circumstances is to vacate the premises. Another significant New York case, along similar lines, is *Granford Realty Corp. v. Valentine*, 337 N.Y. 2d 160 (1972).

In the case of *Winchester Mgt. Corp. v. Staten*, 361 A. 2d 187 (D.C. 1976), eighty new tenants in an apartment complex refused to pay rent because of failure of landlord to provide adequate heat and air-conditioning during the winter and summer months, respectively. Under Housing Regulations of a municipality, the Court held

it may take cognizance of such complaints, and allow setoff against rent for failure to provide the agreed-upon services.

Landlord obligated to continue habitability of premises

In an action by a landlord for unpaid rent, a tenant may defend and set off the landlord's breach of his continuing obligation to maintain an adequate standard of habitability. The case of *Park Hill Terrace Associates v. Glennon*, 369 A. 2d 938 (N.J. App. 1977), involved the failure of an air-conditioning unit to function—whether air conditioning was an amenity or an element of habitability. Here, the appellate court held that the air-conditioning failure affected the habitability of the premises, and the tenants were entitled to an abatement in the rent.

Repairs

The general rule is that the obligation of the tenant to pay rent and a covenant by the landlord to make repairs are separate and independent. The failure to make repairs promised by the landlord does not automatically discharge the obligation of the tenant to pay rent, unless the landlord evicts the tenant, even partially. If the tenant remains in possession, liability for rent continues: *Zion Industries, Inc. v. Loy*, 361 N.E. 2d 605 (Ill. App. 1977).

The tenant is bound to make tenantable repairs, but he cannot be forced to make lasting and general repairs to the structure which would put the property in a better condition than it was when he took possession. Generally, a tenant cannot be bound to make good such deterioration as arises from necessary wear and tear incidental to the proper and ordinary use of the property: *Lensing v. Carlisle Motor Sales, Inc.*, 189 A. 2d 307 (Pa. 1963).

Most printed form leases require that the tenant shall keep the premises in good repair "and, at the expiration of the term, deliver up the said premises in as good order and condition as the same are now, reasonable wear and tear, and damage by fire or other casualty, not occasioned through Lessee's negligence, excepted."

In the case of *Scott v. Prazma*, 555 P. 2d 591 (Wyo. 1976), the owner leased a 30-year-old building, which was in some disrepair, to a tenant for 10 years. The lease contained a clause similar to the above. After the second year of the lease, the municipality served notice that considerable repairs should be made to the structure (which would cost a substantial sum) for it to comply with safety and building codes. The tenant refused to pay further rent, claiming that a constructive eviction had occurred. The Court held that the landlord was obligated to make major repairs and that the tenant was justified in moving from the premises.

A broker, in negotiating the sale of an investment property, is held accountable for the representations made in inducing a sale. The case of *Neff v. Bud Lewis Co.*, 548 P. 2d 107 (N.M. App. 1976) is a case in point. The broker had managed the apartment building before the sale and had caused the then owners to make repairs to the heating and cooling system. He assured the buyers that the repairs had been made and that the system was soundly constructed. However, after the sale, tenants complained as to inadequate service and the new owners were obliged to make repairs, in a substantial amount.

The Court held the broker liable, stating that the buyer had a right to rely on the negligent representation of a fiduciary.

Ordinarily, there is no obligation upon the landlord to make repairs. If, due to an existing defect, the tenant, a member of his family, or an invitee is injured, does the injured party have a right of action against the owner? The general rule of law is that a landlord who is entirely out of possession and control is not liable for an in-

jury sustained by the tenant or by one visiting the tenant if the defect responsible for the accident was a patent one. The principle of law is fairly well established that, where the tenant rents the entire premises, the owner is not liable for any injury to the tenant or his invitees by reason of any dangerous condition existing at the time the tenant took possession. "The lessee's eyes are his bargain" and he takes the property "as is" with all existing faults. However, the landlord may be liable, depending upon extenuating circumstances in the particular case under an implied warranty of habitability, as discussed heretofore.

A landlord's duty of reasonable care in maintaining property that he controls extends to all lawful visitors on his premises, including the lawful visitors of his tenants: *Lindsey v. Massios*, 360 N.E. 2d 631 (Mass. 1977). However, no legal duty rested upon landlords to protect their tenants from the criminal action by any unidentified outsiders: *Kosin v. Shero*, 360 N.E. 2d 572 (Ill. App. 1977).²

A landlord is responsible where he conceals or fails to disclose a dangerous condition of which he had knowledge and one which a tenant was not likely to discover upon examination. A hidden, or latent, defect does impose a liability upon the landlord. He is also liable when he leases premises in a dangerous condition for a public use and has reason to believe the tenant will not first correct the defect. The lease of a theatre or a stadium is in this classification. In other words, where an owner leases public premises which constitute a nuisance, then, whether he is in or out of possession is immaterial insofar as relieving himself of liability is concerned.³ A department store or a public garage would not fall in the described category. Although a landlord may not be required to make repairs, nevertheless, if he undertakes repairs voluntarily, he becomes responsible for any accident occasioned by the negligent manner in which the work is performed. Where a landlord has covenanted to make repairs and fails to do so, and someone is injured as a result of such failure, the agreement to repair does not operate as a resumption of control by the landlord and he is not liable for the injury. Of course, in an action of assumpsit on the contract, the landlord would be liable for damage suffered by the tenant. He would not be liable in a tort action for negligence. Where a landlord has promised to make repairs as an inducement to the execution of a lease, the tenant should insist that the repairs be written into the lease contract. If verbal only, and if the landlord later refuses to perform, the tenant would run into difficulty in compelling performance under the parol evidence rule.

Sidewalk injuries

What has been stated relative to liability relates to accidents upon the premises. Another important question arises in connection with sidewalk injury cases. Here, again, an owner out of control and possession is not liable. An owner who rents out a portion of the premises or who rents out separate parts to different tenants is held to remain in possession and control of the sidewalk, stairways, and corridors and is, therefore, responsible if any injury occurs in these areas: *Leary v. Lawrence Sales Corp.*, 442 Pa. 389 (1971). Where the municipality notifies the owner to repair a sidewalk and an injury results before the repair is made, the owner would be liable. A mortgagee in possession who exercises control and dominion over the leased premises is held to occupy the same role as the owner. In order to recover damages the injured party must establish the existence of a dangerous condition and that the owner had notice of it. The claimant must also be free of contributory negligence.

² *Noble v. Worthy*, 378 a. 2d 674 (D.C. App. 1977)—a landlord is not required to so secure premises that no accident can happen.

³ *Folkman v. Laver*, 244 Pa. 605 (1914); *Webel v. Yale University* 7A Fd. (Conn. 1939).

Dangerous conditions include an accumulation of snow or ice, a missing brick, an elevation or depression causing an uneven surface, an accumulation of debris concealing an uneven pavement or gutter, an accumulation of oil causing a slippery surface, a hole in the sidewalk, and faulty position of basement outlets or doors to the pavement.⁴

In the case of *Richardson v. Weckworth*, 509 P. 2d 1113 (Kan. 1973), the landlord agreed to repair a broken sidewalk. He failed to do so for several months. The tenant fell, suffering serious injuries. The tenant sued. The landlord's defense was that the defective sidewalk had been in existence for one year, the tenant knew it and, therefore, the tenant has assumed the risk, and was guilty of negligence. The landlord was held liable for the tenant's injuries. Landlord's duty to remove snow and ice: *Geise v. Lee*, 519 P. 2d 1005 (Wash. App. 1974).

Notice

Where an owner is sued for injuries, the owner must have had notice of the defective conditions. Notice to the owner may be *actual* or *constructive*. Actual notice is knowledge of the owner through observation or proximity. Constructive notice is where the defect has existed for such a long time that it will be presumed that the owner saw it or could have seen it with a reasonably frequent inspection. Since the municipality owes a duty of protective safety to its citizenry, the person injured will usually sue the city in the first instance. The city will then bring in the property owner as an additional defendant. The owner, in turn, may bring in the tenant as an additional defendant if the responsibility lies with the tenant.

Additions, alterations, improvements

An important covenant contained in leases of business property is one which provides that all alterations, additions, and improvements made by the lessee upon the property shall remain until the end of the lease, at the *option* of the lessor. It is frequently further provided that the lessor shall have the option of requiring the tenant to restore the premises to their original condition. The meaning of these three words, "alterations, additions, and improvements," has been the source of much friction, and it is practically impossible to lay down a general rule which would be applicable in all cases. The conflicts usually arise between the parties over machinery and other fixtures annexed to the freehold. The tenant claims that such equipment is trade fixtures, and as such, personal property, which may be removed by him at the expiration of the lease. The landlord on the other hand contends that such property is included within the phrase "alterations, additions, and improvements." For example, if a tenant leased a store and installed shelving at considerable expense, which shelving enhanced the value of the building for renting purposes, the landlord would be within his rights in maintaining that such shelving constituted additions, alterations, and improvements, and in requiring that it be left upon the premises at the expiration of the lease. On the other hand, if the shelving installed were of little value and would cost more to remove than it was worth, the landlord could insist that the tenant remove such fixtures and restore the premises to their original condition in accordance with the terms of the covenant in the lease.

⁴ In *Geise v. Lee*, 519 P.2d 1005 (Wash. App. 1974), owner was held not liable to a tenant for injuries due to snow and ice in a mobile home park, unless, as landlord, he assumed this liability.

Forcible entry in tenant's absence

Sometimes, a landlord or his agent, in the tenant's absence, will change the locks on a dwelling or apartment to prevent the tenant from obtaining re-entry. The rent may be delinquent. Even so, the landlord cannot take the law into his own hands. In the case of *Edwards v. Investment Co.*, 272 N.E. 2d 652 (Ohio 1971), the lease contained a clause that in event of tenant's default in rent or other provisions of the lease, the landlord may, without notice or demand, terminate the lease and remove, store or dispose of tenant's property at the risk and expense of the tenant. The court held the clause was against public policy and, therefore, void. A landlord must resort to law and legal methods, and not resort to self-help, to obtain possession of premises, when tenant fails to make rental payments: *Bass v. Boltel & Co.*, 217 N.W. 2d 804 (Neb. 1974).

Sub-letting and assignment

One of the most important covenants frequently found in leases is one forbidding the tenant to sub-let. All covenants against sub-letting in a lease are strictly construed. A covenant against *assignment* will not be construed to include *sub-letting*. In exactly the same way, should the lease contain a proviso that the premises should not be sub-let, the tenant will not be prevented from assigning his lease to anyone to whom he sees fit. To prohibit sub-letting entirely, it is important to provide "or any part thereof." Since the lessor usually prepares the lease, any ambiguity will be construed against him, in accordance with the legal principle that an instrument, if ambiguous, is most strongly construed against the person who prepared it. A tenant, in sub-letting a portion of the leased premises, should see to it that the sub-tenant's rights do not rise higher than his own. In fact, a special clause should be inserted to the effect that the lease is made subject to the terms and conditions of the landlord's lease from the owner. In renting out a portion of a business or commercial floor, it is advisable to insert a clause that the sub-tenant shall observe the same hours of opening and closing his business as the landlord follows. Also that the sub-tenant, his employees, customers, and invitees will refrain from committing any act or conduct which may be construed as a nuisance.

In the case of *Kroger v. Chemical Securities Co.*, 526 S.W. 2d 468 (Tenn. 1975), a long-term lease between the owner and tenant contained no restriction on assignment or sub-letting. At the end of the primary term, the tenant sub-let the premises to a retail establishment. The landlord preferred to re-let the premises to another grocery, or to have Kroger continue with its grocery operation. The trial Court and the Court of Appeals held that there was an implied covenant of continual occupancy by the tenant. The Supreme Court reversed, holding an implied covenant of continual occupancy was not warranted since there were no specifics covering the lease assignment. The Court also noted that the original lease was negotiated by expert real estate brokers.

Where a lease simply provides that written consent to an assignment is required, the landlord may refuse consent, and his reason is immaterial: *Robinson v. Weitz*, 370 A. 2d 1066 (Conn. 1976). However, if the terms of the lease provide that the landlord's consent to an assignment is required, but will not be unreasonably withheld, the landlord may not arbitrarily refuse his consent where the proposed assignee is not objectionable and is a responsible person. A lessor's refusal to consent to a sub-lease, solely on the grounds that sublessee was a widow, was unreasonable

and in violation of the clause that "consent should not be unreasonably withheld": *Stern v. Taft*, 361 N.E. 2d. 279 (Ohio App. 1976).

Abandonment of premises

In the case of *Condor Corp. v. Arlen Realty and Development Co.*, 529 F. 2d 87 (Minn. 1976), the question involved was whether, upon abandonment of the premises by the tenant, the landlord acted in a reasonable manner in his efforts to re-let the premises and mitigate the tenant's damages: *Sommer v. Kridel*, 378 a. 2d 767 (N.J. 1977). While reasonable efforts to mitigate the tenant's damages are required, no hard and fast rule applies. Each case depends upon its particular facts as to the extent of the landlord's efforts to find a tenant and the nature of the property involved, including the terms of the lease.

Surrender of premises

Whether a tenant is liable for damage caused by fire, the elements, "an act of God," or an inevitable casualty depends upon the language of the lease. If he agrees to return the premises at the expiration of the lease, reasonable wear and tear alone expected, he must restore the premises if damaged by fire or other accident. If fire is excepted, the tenant would still be responsible for damage caused by flood, tornado, or other "act of God" or by an inevitable accident. Act of God and inevitable accident are not synonymous. Even if the clause is sufficiently comprehensive so as to exclude a liability for rebuilding, the tenant would still be liable for the payment of *rent*, unless there was a clause abating the rent. This is the common law rule, but it has been modified by statute in some states to the effect that the rent ceases until the property is repaired by the lessor. However, if the premises are only partially destroyed by fire and the tenant remains in possession, the rent does not abate. It is not uncommon in a commercial lease to include a provision for the abatement of rent due to destruction of the leased premises, as follows:

It is understood and agreed by and between the parties hereto, that if during the term of this lease and any renewal hereof, the building is damaged or injured by fire, Act of God, or other casualty so that the demised premises are rendered unfit for occupancy to the extent that said premises cannot be repaired within ninety (90) days from the happening of such injury, then this lease shall cease and determine from the date of such injury. In such case, the Tenant shall pay the rent apportioned to the time of injury, and shall immediately surrender the leased premises to the Lessor, who may enter upon and repossess the same. If any such injury can be repaired within ninety (90) days thereafter, Lessor shall enter and repair, and this lease shall not be affected except that the rent shall be apportioned and suspended while such repairs are being made; but if said premises shall be so slightly injured by fire, Act of God, or other casualty, so as not to render same unfit for occupancy, then the Lessor agrees that the same shall be repaired with reasonable promptitude, and in that case the rent accrued or accruing shall not cease or determine.

Where the lessee has made extensive repairs at his own expense preparatory to taking possession, his investment should be protected by adequate fire insurance and a clause relative thereto, incorporated in the lease. The lease provision should read: "The proceeds of any fire insurance carried in both the Lessor's and Lessee's names and paid for by the Lessee, shall inure to the sole benefit of the Lessee."

Termination

There are various ways by which a lease may be terminated—by performance, agreement, or breach. The usual method is, of course, by performance; that is, the lease normally terminates at the expiration date.

Option and first right of refusal clauses

Where a lease contains an "option" clause, the lessee has the privilege of purchasing the leased premises at a *specified* price, during the term of the lease. The lessee knows exactly what price he must pay. In a lease containing "right of first refusal," it means that the lessee has the right to meet any bona fide offer made by a third party for the purchase of the leased premises. It differs from an option in that the lessee does not know what the price offered will be: *King v. Dalton Motors, Inc.*, 109 N.W. 2d 51 (Minn. 1961); *LoCicero v. Demers*, 186 N.E. 2d 604 (Mass. 1962); *Hamel v. Altman*, 317 N.Y. S. 2d 722 (1971).

In an option, the time element is of the very essence of the contract. An option *expires* if not exercised within the time limit. In the case of *Cities Service Oil Co. v. National Shawmut Bank of Boston, Adm. et al.*, 172 N.E. 2d 104 (Mass. 1961), the lessee had an option to purchase the leased premises during the ten-year term, expiring August 31, 1959. A letter purporting to exercise the option was mailed from New York on August 31, 1959, at 8:30 P.M., to the lessor, in Boston. It was received by the lessor on September 1, 1959. The court held that the mailing in New York "at such a late hour was not a proper giving of notice." The court held, in effect, that it is the majority rule that notice to exercise an option is effective only upon its *receipt* by the party to be notified, unless the parties otherwise agree (citing numerous cases).

In *Schlussberg v. Rubin et al.*, 435 S.W. 2d 226 (Tex. 1971), the court held that a lease provision, giving lessee first refusal to renew lease at price *to be agreed upon*, or to meet any bona fide offer, was not definite and certain, and was, therefore, unenforceable. A case of a similar tenor is *Playmate Club, Inc. v. Country Clubs, Inc.*, 462 S.W. 2d 269 (Tenn. 1970). In accord, *Milles v. Bloomberg*, 324 N.E. 2d 207 (Ill. App. 1975).

Surrender of lease

The parties may mutually agree to terminate the lease before the expiration date. This is called a surrender. It is not necessary that such an agreement be in writing or in any particular form, and no consideration need be included in order to make the contract binding upon the parties, the presumption being that the advantage accruing to both parties is sufficient to give it full force and effect. In order, however, to make a surrender complete, it is necessary that it be specifically accepted by the landlord.

In the case of *Estate of Wm. O. Barnes, Deceased*, 37 N.Y. Misc. 2d 833 (1962), the court held that turning over keys to superintendent of building did not constitute a surrender.

Proof of acceptance must be clear and explicit. A lease may be terminated by breach of condition. Where one of the parties violates some important covenant in the lease, the other party may plead such act as grounds for the termination of the contract.

Gray, owner of a commercial building, operated a shoe store. He later sold the stock and fixtures to Dean, leasing the store to Dean for five years. Dean was unsuccessful in operating the business after six months, and decided to quit. He sold the stock and Gray agreed to buy the fixtures, cash register, etc. on July 1, 1968. At the end of the day, Dean placed the keys in the cash register and abandoned the premises. Three months later, Gray sued Dean for the intervening months' rent. The

court held there was a surrender of the lease since the owner used the premises to store the fixtures there: *Sanden v. Hanson*, 201 N.W. 2d 404 (N.D. 1972).

Eviction

Where the landlord is guilty of a violation of the lease, such breach is termed an eviction. It is a violent assertion of a right by the landlord as opposed to the rights which the tenant possesses. In other words, it is an unwarrantable ousting of the tenant by the landlord. The distinction between an eviction and an ejectment rests primarily upon this point. An eviction is a wrongful dispossession of the tenant. The action of ejectment is used to test, or establish, the title to real estate. An eviction has a somewhat different meaning from that generally attributed to it by the layman. It need not necessarily be a forcible ousting or removal of the tenant by the landlord from possession of the premises. As used here in connection with the law of landlord and tenant, it means the violation of any material covenant by the landlord which interferes with the tenant's quiet and peaceful enjoyment of the premises. Suppose, for example, a landlord should go upon the premises for the purpose of making repairs, there being no provision in the lease giving the landlord such right; the tenant could plead such action as sufficient grounds for cancelling the lease agreement. It is immaterial that the repairs to be made would benefit the tenant.

It must be remembered that the act complained of must be committed by the *landlord or an agent* representing the landlord or acting for him. The only ground upon which a tenant can plead eviction by a third party is in case the one whose act he complains of was exercising a right which he secured under a *paramount title to that of the landlord*. For example, if Jackson leased to Finch and afterward it turned out that the title was vested not in Jackson but in Chase and Chase should proceed to dispossess Finch, the action of Chase would amount to an eviction. If, however, the party whose acts were complained of proceeded under a questionable or defective title, the tenant could not plead immunity on the grounds that an eviction occurred. An overt act committed by a third party is not an eviction in contemplation of law. Anderson, the owner of a building, had leased the upper wall of the building to Brown for a term of three years for advertising purposes. Brown had erected an advertising sign upon the wall which could be seen by people passing in the vicinity. At the expiration of one year, Chambers, the owner of the adjoining property, a one-story building, erected an addition on the building in such a way that the view of Brown's wall was completely hidden from the eyes of passers-by and its value for advertising purposes destroyed. Consequently, Brown refused to pay rent on the grounds that an eviction had occurred, but the court disallowed the claim on the grounds that the injury had been inflicted neither by the owner nor by one having paramount title to the wall upon which the advertising was displayed, but by a third person, over whose action Anderson had no control. Entry by the city, or repairs ordered by the municipality, would not constitute an eviction. Eviction by the State, under its power of eminent domain, would not sustain a cause of action against the landlord.

A lessee may be entitled to damages for taking of the leased property, by condemnation, unless he waives this right. In a commercial lease, especially for a long term, provision should be inserted for the protection of the lessee in this situation.

In a long-term leasehold, the lessee's interest may be more valuable than the lessor's land: *State of Tennessee v. Burkhart et al.*, 370 S.W. 2d 411 (Tenn. 1963), where the verdict was for ten times as much for the lessee, as it was for the owners. How-

ever, the lease may provide, as was the case in *Sugarman v. City of Baltimore et al.*, 191 A. 2d 240 (Md. 1963), that:

In the event that condemnation proceedings are instituted against the premises hereby demised, and title taken by any Federal, State or Municipal body, then this lease shall become null and void, and the lessee shall not be entitled to receive any part of the award which may be received by the Lessor.

Fisk leased certain premises to Martin. They were part of a double house. Crum, the owner of the other half of the dwelling, had the party wall torn down after complying with the legal requirements. Martin claimed an eviction and refused to pay rent since he only had three walls on the leased premises. The tenant was held liable for rent. In another case, Appleby owned certain premises subject to a mortgage in favor of Eastman. Appleby then leased the premises to Crane for five years. Regretting his bargain, and seeking to get rid of Crane, Appleby purchased the mortgage from Eastman and took an assignment in the name of a "straw" party. The assignee then foreclosed and sought to eject Crane from possession. Appleby lost sight of the fact that under his lease to Crane the covenant for quiet possession protected the tenant not only from direct acts of the lessor and his agent, but also from those of persons holding a paramount title. Thus, the lessor is liable in damages to the tenant if the mortgagee asserts his rights to put the tenant out of possession. If the lessor becomes the holder of the mortgage, his exercise of the right of possession would at the same time subject him to a liability for so doing. The same result would follow if he brings action in the name of another (a "straw" party).

A mortgagee in possession must be cognizant of the fact that the mortgagor might pay off the debt during the term of a lease given by the mortgagee to the tenant, terminate the lease, and thereby subject the mortgagee to a cause of action for eviction damages by the tenant. In order to avoid this possibility, a mortgagee in possession, when leasing property owned by the mortgagor, should include a provision in the lease as follows:

The lessee herein understands and agrees that the lessor is executing this lease under rights as mortgagee in possession of said premises and does not in any way or manner, covenant, agree, promise, or guarantee to the lessee, his heirs, or assigns, possession, quiet enjoyment or otherwise as against any person having a paramount title or interest to the within leased premises, anything contained in the written lease to the contrary notwithstanding.

On the other hand, if the lessee entertains any doubts or suspicions as to the lessor's legal right to lease the premises, he should insist upon a provision that:

The lessor hereby certifies and represents that he has full right and authority to make and execute this lease and further certifies and represents that the demised premises are at the time of entering into this lease, free and clear from any mortgage, lien, or other encumbrance, which, if proceeded upon, might or could divest this lease.

Just as in the case of a sale of property, a broker should be familiar with zoning laws applicable to an intended lease by a prospective lessor. In the case of *Hoff v. Sander*, 497 S.W. 2d 651 (Mo. App. 1973), the lessor and lessee both believed that the leased property could be used for boarding horses, dogs and other pets. The city zoning ordinance, in fact, did not permit that use. The court held that the parties were charged with knowledge of zoning applicable and could not procure rescission of lease or damages on account of mutual mistake. Contracting parties are presumed to know the law and have it in mind when drawing their agreement: *Dill v. Poindexter*, 451 S.W. 2d 365 (Mo. App. 1970).

Tenant's remedy

If an actual or constructive eviction occurs and the tenant chooses to terminate the agreement, all of the rent which is past due and payable becomes an obligation which must be settled by the tenant upon demand. This action on the part of tenant terminates any right which the landlord has to demand rent after the date of the eviction. It is important to note that if the landlord should evict a tenant from a portion of the property, the tenant could, on this ground, evade the duty of paying rent on the portion which still remains to him. An eviction by landlord from part of the premises is, in the eyes of the law, an eviction from all of the property.

An important modification of this rule, however, exists in the case where a tenant is evicted from part of the premises by a paramount title invoked by a third party. In this case, the rent would be apportioned so that he would have to pay rent for that portion of the premises which still remained to him. If, however, the lessee takes the property with knowledge of the defective title of the lessor, it is then impossible for him to plead eviction as a defense against the payment of rent. After an eviction has occurred and the tenant remains in possession of the premises and takes no action which would indicate that he intends to hold the landlord responsible for the overt act, his continued occupation would constitute a waiver of the injury. When an eviction occurs, the tenant should promptly assert his rights in the matter. There are two courses which he may pursue: first, he may terminate the contractual relation between himself and the landlord by moving out and bringing suit for damages which he has sustained; or secondly, he may remain in possession of the premises and, after promptly notifying the landlord of the injury suffered and stating that he will hold the landlord responsible for the damage, he may bring suit for the amount he claims to have lost. In this event, however, it is necessary for him to continue to pay rent in exactly the same manner as though no breach had occurred.

Where a tenant is temporarily away from the premises, the landlord takes a grave risk when he padlocks the premises and prevents the tenant's re-entry: *Pitman v. Griffith*, 200 S.E. 2d 760 (Ga. 1973).

Forfeiture

Corresponding to the tenant's right to terminate the lease by reason of breach of covenant by the landlord, is the landlord's right to terminate the lease where the tenant is guilty of a violation of a material covenant. This is known as a forfeiture. Under the common law, if a tenant should disclaim, disaffirm, or impugn the landlord's title by some positive act, he thereby forfeits all rights under the contract. The reason for this is obvious. If the landlord could not terminate the contractual relation, it might be possible for the tenant to work great harm to the property, not only by violating the spirit and letter of the agreement but also by going so far as to claim title to the property by adverse possession after continuous occupation for the statutory period. The law, therefore, provides that the landlord has the option of declaring the lease forfeited upon the breach of any material covenant by the tenant. The landlord then has the right to enter and take possession of the property unless it can be shown that he has by some act waived the breach which has occurred. Suppose, for example, that a landlord should accept rent from a tenant for a period subsequent to the commission of the acts in controversy; in this case, he would have waived his right to declare the contract forfeited by permitting the tenant to continue in possession. The most usual breach by the tenant is non-payment of rent.

Landlord's levy

It is important to note in this connection that distraint instituted for rent in default constitutes a technical waiver of the forfeiture which has occurred and permits the tenant successfully to maintain his right to possession under the terms of the lease. A landlord's levy is one of statutory enactment entirely. Under the common law, the landlord had no lien on the chattels of the tenant on leasing the premises or to the crops raised thereon. They were the absolute property of the tenant. It is in statutory law that the landlord has a method by which he can secure a lien upon the chattels and goods of the tenant. The right to distraint, however, exists in favor of the landlord only upon a claim for rent due and accrued.

Distraint defined

Distraint may therefore be defined as the right of a landlord to levy upon a tenant's goods and chattels for rent *in arrears*. The right does not reside in the landlord until there has been a default in rent, but he can bring this action the day after the rent is due. The case of *Phillips v. Guin and Hunt, Inc.*, 344 So. 2d 568 (Fla. 1977), emphasizes the importance of following the exact requirements in an action of distraint. A diligent search and inquiry must be made for personal service, rather than merely posting notice on premises.

Rent in arrears

If the rent is due on the first day of the month, as is generally true, and is not paid on that date, distraint proceedings may be instituted against the tenant on the second day of the month.

Penalty clause

Some leases provide that the rent shall be \$100 per month, due and payable on the first day of the month, and if not paid by the tenth of the month, then the rent, in that case, shall be \$110 per month. Since the rent is not in arrears until after the due date, the important practical question arises as to when the rent is in default; is it on the second day of the month or must the landlord wait until the eleventh day before instituting his right to distraint, or is the rent not in arrears until the first day of the following month? It would appear that even though the lease provides for the payment of rent on the first day of the month, the effect of the second due date is to avoid the responsibility of payment on the first day, and the tenant is, therefore, within his rights in tendering the correct amount of rent at any time during the month. No lawful levy can be made until after the month has elapsed. It would make no difference whether a discount or penalty clause is used. The question becomes particularly vexatious during the last month of the lease, as the landlord may be fearful that the tenant may remove without payment of the rent; yet he is powerless to act unless he holds a rent deposit to insure payment.

A landlord may estop himself from insisting upon the punctual payment of rent where he has indulged a tenant and accepted rent after the due date. Suppose the lease from Adams to Brown provides for the payment of rent on the first day of each month during the lease term from May 1, 1977 to April 30, 1978. Brown pays the May rent on the first day, but after that he makes his rent payments anywhere from the 15th to the 25th of the month. In October, 1977, Adams could not distraint for the month's rent on October 2, because of his previous conduct in accepting the rent late. The doctrine of estoppel could be invoked against him. In order to reas-

sert his right to punctual payment of rent, it would be necessary for Adams to notify Brown of his intention to hold him to punctual payment of the rent in the future.

The lessee need not tender payment in money when he has on previous occasions tendered a check which was accepted as payment of rent. If the landlord desires to insist upon payment in cash, the lessee is entitled to notice. Where rent is delinquent and the tenant makes a partial payment, the payment generally will be applied to the rent which first accrued. Rent paid "on account" will not give rise to the presumption that it was paid for the current period. The lessor may apply it to the most delinquent rent. This rule, of course, may be modified by agreement between the parties.

Where lessee paid all overdue rent before receipt of notice to quit, lessor had no right to terminate lease for failure to make *timely* payment of rent: *Village Development Co., Ltd. v. Hubbard*, 214 N.W. 2d 178 (Iowa 1974).

Penalty and forfeiture clause

A broker and salesman should be familiar with the legal difference between liquidated damages and a penalty clause. It has been noted that "liquidated damages" is frequently used in an agreement of sale where the vendee fails to consummate the transaction and earnest money deposit may be forfeited on that account. It is a sum of money agreed upon for breach of contract by the vendee. Liquidated damages, in an amount certain, is upheld by the courts, where the amount of damages sustained by the aggrieved party cannot be definitely ascertained. Where the damages flowing from the breach can be ascertained with some certainty, then the sum agreed upon as liquidated damages, if greater than the actual amount of damages, will be considered a penalty and unenforceable.

As applied to a lessor-lessee relationship, an example frequently found in leases will illustrate. In the lease from Adams to Baker is a provision that the lessee is to pay all water and sewer charges, as they become due quarterly. The lease further provides that upon failure to do so, Baker shall pay Adams the sum of \$100 as "liquidated damages." Baker fails to pay the water and sewer charges for the fourth quarter of 1976 in the amount of \$24.70. The lease expires on January 1, 1977. Adams can collect only \$24.70, the actual charges, rather than the agreed-upon sum of \$100.

A lessor may prefer to oust a delinquent tenant rather than struggle with him periodically to recover the rent. Under a "tight" form lease, which contains a confession of judgment clause for possession, a non-paying tenant can be evicted promptly. Likewise, a tenant who holds over unlawfully (without the consent of the lessor) after the expiration of the lease, may be dispossessed in the same manner.

Effect of mortgage

Where a lease antedates a mortgage, the mortgagee takes the property subject to the lease if the mortgage is foreclosed at a later date. The lease cannot be terminated. In order for the mortgage to have precedence, it would be necessary to stipulate in the lease that it is subject and subordinate to any mortgage of record or which may at any time be placed upon the property. The tenant should have the right to pay any delinquency on the mortgage and apply such payments to the rent obligation. Ordinarily, a mortgage placed upon the premises before the execution of a lease would have priority. The lease could be terminated by the mortgagee, upon his acquisition of the property through foreclosure. This is true even though

the mortgagee accepted rents from the tenant during a period prior to foreclosure when the former was a mortgagee in possession. In other words, his rights as *owner* are separate and independent from his rights as *mortgagee in possession*.

Effect of bankruptcy

A forfeiture clause in a commercial lease, because of the tenant's bankruptcy, was declared unenforceable in the case of *Queens Blvd. Wine and Liquor Corp. v. Blum*, 503 F. 2d 202 (N.Y. 1974).

Leased housing program

The "Leased Housing Program" is a program of Federal assistance to provide habitable living quarters for large low-income families in dwellings leased from private owners and real estate companies. It is designed to provide "instant" dwellings for these low-income groups more rapidly than through new housing; to make better use of and rehabilitate present structures and thereby upgrade neighborhoods. The prime object is to encourage private interests to undertake this civic program by governmental guaranty of the income to such developers. This is accomplished by having the owner lease the structure to the Housing Authority of a city for a rent return and the Authority then sub-lets the unit to the individual tenants. The relationship between the owner and the Authority is upon the usual and ordinary relationship of Lessor and Lessee. Necessary mortgage financing is facilitated upon the strength of a "letter of intent to lease" from the Housing Authority to the owner. Rent is guaranteed by the Housing Authority to the owner even if the property is unoccupied—payable monthly. Since the program is intended to provide housing for large families, the dwellings or apartments should have a minimum of three bedrooms. The Housing Authority will adopt a rental scale according to the tenant's income and if less than the rent in the prime lease, the difference is paid by the Housing Authority. The lease term may vary from one to five years. Since the Authority is the principal tenant, it is responsible to return the premises at the expiration of the lease term in the same condition as at the commencement of the term, reasonable wear or tear or accident by fire excepted. Public liability is controlled pretty much by the law applicable to the usual relationship of landlord and tenant.

Questions on Landlord and Tenant

1. Q. What is the tenancy called where the lessee holds the land at the will of the lessor?
A. Tenancy at sufferance; in some states, a tenancy at will.
2. Q. What is the obligation of the renting agent to the owner?
A. To obtain the owner the greatest income, for the longest period of time, with the least expense on the property managed, keeping in mind the well-being of the tenant.
3. Q. Can a lease be enforced when the consideration is expressed in terms of farm products instead of money?
A. Yes.
4. Q. In computing the income from an apartment house, there are several major items taken from the gross income in order to arrive at the net income. Name at least six (6).
A. (1) taxes (2) insurance (3) repairs (4) depreciation on building (5) depreciation on furniture (6) collection of losses (7) management expenses (8) reserve for replacements (9) utilities (10) license fees.
5. Q. In a long-term lease, what provision should be included relative to taxes?
A. In a lease for 5 or 10 years, there should be a clause that the tenant agrees to pay any increase in taxes during the term of the lease.
6. Q. In the management of property, name four duties which an agent owes to his owner.
A. (1) collect rents (2) keep proper records (3) remit net proceeds promptly (4) maintain and repair property.
7. Q. When a leased property is sold, and the lease does not expire for seven months after the sale takes place, at what time can the purchaser take physical possession of the property?
A. Upon expiration of lease (7 months).
8. Q. What do you understand by a sub-lease?
A. A lease granted to another person by the lessee.
9. Q. Distinguish between an assignment of a lease and the sub-letting of a lease.
A. In a sub-lease or sub-letting of a lease, the lessee becomes the lessor and the sub-lessee becomes the tenant. Calls for a new lease. An assignment of a lease is a transfer by the lessee of his rights under the terms of the original lease.
10. Q. Name the essentials of a valid written lease.
A. Parties, description, rental, term, demising (leasing), signatures and delivery.
11. Q. In regard to lease terminology, what is the difference between an option and a first refusal?
A. An option gives the lessee a definite right to buy the leased property at a designated price and within a specified time. A first refusal gives the tenant the first right to purchase the property at a price offered by a third party.
12. Q. In the investigation of a prospective tenant to determine his desirability, what information should be ascertained?
A. Size of family, occupation, approximate income, previous address and former rental agent. A credit report is also recommended.
13. Q. What information should a rent receipt contain?
A. Date paid, amount, address of property, rental period covered by payment, signa-

ture on receipt.

14. Q. Write an ordinary receipt for rent.

A.

Des Moines, Iowa

January 3, 1978

Received of Henry Thompson Sum of Seventy-five
 (\$75.00) Dollars, for rent for month of January, 1978, for property at
 1334 Capitol Street, Des Moines, Iowa.

Des Moines Realty Corporation,
 Agent for James Black, Lessor.

By C. E. Prentice, Secretary.

15. Q. Where the tenant defaults in the payment of rent, can the landlord terminate the lease and evict a sub-tenant as well as the tenant ?
 A. Yes, the sub-tenant's rights rise no higher than those of the tenant.
16. Q. Arthur verbally leases certain premises to James on February 1, 1977, for a one-year term from May 1, 1977, to April 30, 1978, with an option of two additional years at an increased rental. On April 1, 1978, Arthur notifies James that the property has been leased to Black. Does James have any cause of action against Arthur?
 A. No. Under the Statute of Frauds, the lease from Arthur to James had to be in writing in order to be enforceable. In most states, the period is one year from the making of the lease, or from February 1, 1978. In Pennsylvania, the period is three years.
17. Q. A lease is made by the Rapid Realty Co. agent to John J. Flynn for a term of five years. The lease is approved by the owners. Prior to the expiration of the five-year term, the Realty Co. executes a new lease for an additional five-year period. Three months before the expiration of the original term, the owners notify Flynn to vacate the premises at the end of that term. The tenant insists he has a lease for another five-year term. Is he correct ?
 A. No. The agent's authority to execute a lease beyond the period fixed by the Statute of Frauds must be in writing, and it does not appear that the agent had such written authority.
18. Q. An agent executed a lease to Jenks, as John Steele, agent. Upon the tenant's default in rent, judgment is confessed against Jenks in the name of the owner, Adam Taylor. Jenks petitions the court to have the judgment stricken off. Will Jenks succeed ?
 A. Yes. The judgment was improperly entered as the owner was not a party to the lease.
19. Q. If, in the preceding case, the lease bore a notation "Approved by Adam Taylor," would Jenks succeed ?
 A. Yes. The notation does not establish Taylor as the owner and a party in interest. To all intents and purposes, he is a stranger to the instrument.
20. Q. Rogers leases premises to Pike for a one-year term. The lease provides that if Pike lawfully holds over after the expiration of the term, he would be a tenant "from year to year" and so on from year to year. The original lease term ends on April 30, 1978. On April 20, 1978, Rogers notifies Pike to vacate the premises at the end of the current term, April 30, 1978. Pike refuses. Can Pike claim possession for another year?
 A. Yes. Rogers should have given Pike statutory notice (30-90 days, depending upon state).
21. Q. Jones leases premises to Brown for one year. The lease provides that if Brown remains over he shall be a tenant from month to month. After 14 months' occupancy, Jones gives Brown 30 days' notice to vacate. Brown claims he has a lease for an additional 10 months. Is Brown correct ?
 A. No. The lease contract determines Brown's rights. It specifically provides that upon Brown's holding over, the tenancy shall be upon a monthly basis and this

- provision will be enforced.
22. Q. A store lease provides that in event of sale, the lessee "agrees to vacate the said premises at any time upon receiving—O—days' notice in writing so to do, in case of sale of said property." Archer sells the property to Connor, who notifies the tenant, Benson, to vacate the premises in 30 days. Benson claims that he has a right to remain in possession until the expiration of the lease term, a period of 20 months. Who will win?
- A. Benson will win. It is a matter of intention of the parties, and it is inconceivable that the lease could be terminated in advance of the expiration date without any previous notice at all.
23. Q. Lloyd leased certain premises to Barnes in February 1978, effective May 2, 1978. Before Barnes took possession, Lloyd permitted Cox to dump earth on the premises so that Barnes later refused to take possession. Can Lloyd collect rent from Barnes?
- A. No. Upon execution of a lease, there is an implied warranty that the condition of the premises described in the lease shall remain the same between the time of the execution of the lease and the beginning of the term.
24. Q. Adams leased certain premises to Thomas and executed a release in favor of Clark, relinquishing his right to distrain upon certain articles owned by Clark and stored upon the premises. Later Adams sold the property to Dwight, who distrains for delinquent rent due him, upon Clark's property. Clark claims his property is exempt from levy because of Adams' release. Decide.
- A. Dwight can sell Clark's property, because Adams' release is personal in its nature and not binding upon Dwight. A new release should have been obtained from Dwight.
25. Q. Can a tenant for life make a valid lease?
- A. Yes, if it does not extend beyond the term of his own life. Since the life tenancy is uncertain, the joinder of the remainderman or reversioner should be had.
26. Q. A bank is a mortgagee in possession. It executes a lease to Casey for a two-year term. During the lease term the mortgage debt is paid by Boone, the mortgagor, who ousts Casey from possession. Does Casey have a cause of action against the bank?
- A. Yes. The landlord guaranteed the tenant quiet and peaceful enjoyment of the premises which was broken by Boone asserting a paramount title.
27. Q. How could the bank have protected itself?
- A. By inserting a proper clause in the lease such as: "The lessee herein understands and agrees that the lessor is executing this lease under rights as mortgagee in possession of said premises and does not in any way or manner covenant, agree, promise, or guarantee to the lessee, his heirs, or assigns, possession, quiet enjoyment, or otherwise as against any person having a paramount title or interest to the within leased premises, anything contained in the within lease to the contrary notwithstanding."
28. Q. What are the interests of the lessor and lessee in a lease called?
- A. Lessor's interest is called a "reversion." The interest of the lessee in the leasehold is usually an "estate for years."
29. Q. Ashley leases certain premises to Bridger for a motion-picture theatre for 10 years, with the right of assignment. Bridger expressly covenants to pay rent. Later Bridger forms a corporation and assigns the lease to the corporation. Upon the subsequent insolvency of the corporation, Ashley seeks to hold Bridger personally liable. Will he succeed?
- A. Yes. By virtue of Bridger's express covenant to pay rent, he continues liable during the term of the lease. Assignment of the lease does not toll Bridger's liability. He would be relieved of liability only if his lease were cancelled and a new lease made to the corporation.
30. Q. A banking corporation leased certain premises to an oil company. Later the oil

company refused to pay rent, claiming that the banking corporation's lease was *ultra vires* (beyond the powers of the corporation). Will it succeed?

- A. No. The contract is executed so the *ultra vires* doctrine would not apply. In addition, it is a long-established rule of law that a lessee cannot impeach the title of his lessor for any cause except fraud.
31. Q. What is the difference between a tenancy at will and at sufferance?
 - A. There is no real difference. A tenancy at will is where a party is in possession of property under a mere license while a tenancy at sufferance is where one comes into possession of land by lawful title but keeps it afterward without any title at all. A tenant in possession under a lease from the mortgagee in possession would be a tenant at sufferance, after the property is foreclosed, insofar as the new owner is concerned.
32. Q. Allen leased certain premises to Beck for a period of one year beginning on March 2, 1977. The lessee remained in possession through March 2, 1978. Is Beck liable for another year's rent?
 - A. Yes. The lease expired at midnight on March 1, 1978. Where the lessee holds over and continues to occupy the premises during all of the day of March 2 of the following year, he will be liable for the whole rent for the second year.
33. Q. Ash leases certain premises to Blake for a three-year term at \$200 monthly. At the expiration of three months, a flood damages the premises to such an extent that the premises are uninhabitable for five months. What, if any, is Blake's liability?
 - A. He is liable for rent for the five-month period. If the lease has no Act of God clause, Blake would also be liable for the cost of repairing the premises, unless exempted by statute.
34. Q. Appel owns certain premises leased to Brent. There is also a mortgage against the property, which is in default, and Cooper, the mortgagee, as well as Appel, demands rent from the tenant. To whom should Brent pay the rent?
 - A. To Cooper. The mortgagee in possession, where the mortgage is in default, is entitled to the rent.
35. Q. A guest fell upon a landing in front of an apartment, due to a hole in the flooring. Is the lessor or tenant liable?
 - A. The lessor. In an apartment building, the lessor is bound to make necessary repairs to stairways, landings, and the like.
36. Q. Archer leased certain premises to Barnes. There is no provision in the lease requiring Archer to make repairs. The city orders the owner, Archer, to make extensive repairs. Can Barnes plead Archer's entry as unlawful?
 - A. No. It would not constitute an eviction even if the action of the city was unconstitutional. The act complained of was not due to any voluntary conduct on the part of the lessor.
37. Q. In the following list of terms, which four pertain to leasing?
 - A. *Covenant*, equity, prospectus, *assignment*, *distrain*, eminent domain, easement, lien, foreclosure, *eviction*. (The terms applying to leases are italicized.)
38. Q. What is the compensation or income received for the use of real property called?
 - A. Rent.
39. Q. What type of property, as a general rule, may be distrained on the rented premises in order to collect delinquent rent?
 - A. All property upon the premises irrespective of ownership unless specifically exempted by statute or previously released by the lessor.
40. Q. Jones leased certain store premises to Bogg, who purchased equipment under a conditional sales contract, duly recorded. Can Jones distrain upon such equipment for delinquent rent?
 - A. Yes. The owner of the equipment should have obtained a release from Jones before making the sale to Bogg; or unless specifically exempted by statute, with notice to owner (lessor).
41. Q. Miller was a tenant of Stone in a small apartment house in Washington, D.C. for

ten years. He planted flowers, plants and shrubbery in the front yard. After sale of the property to Wheeler, he moved and wanted to remove certain rose bushes. The new owner took action to restrain him. Can the tenant remove the rose bushes?

- A. No. The bushes are *fructus naturales* and belong to the owner. The tenant cannot remove them.
42. Q. When a tenant becomes in arrears in his rent, what action can be taken to protect the landlord's interest?
- A. A distraint proceedings may be instituted to collect the rent, and, if there is a "tight" form written lease, confession of judgment for possession may be entered.
43. Q. What is meant by a "percentage" lease?
- A. A lease which provides that the rental shall be a percentage of the gross volume of business done upon the leased premises, for example, 3 per cent. The lease usually provides first for a guaranteed minimum monthly rental.
44. Q. What is meant by a "surrender" of the lease?
- A. A mutual agreement to cancel the lease before the expiration date; it must be specifically accepted by the landlord.
45. Q. Where Anders leases property to Brown, a person of dubious financial responsibility, for a term of five years, what steps can Anders take to protect his interest?
- A. 1. Require a surety on the lease.
2. Require Brown to pay six months' rent in advance to be applied to the last six months of the lease term.
46. Q. Axton leased the roof of a building to Barnes for three years for the purpose of erecting advertising signs. At the end of one year, Colfax, who owned adjoining property, erected an addition upon his property which obstructed the view of Barnes' signs. Barnes refused to pay further rent. Can Axton collect?
- A. Yes. The lessor was in no way responsible for the interference. It is a "bad bargain" on Barnes' part.
47. Q. If a tenant refuses, at the expiration of the lease term, to sign a new lease upon different terms, can the landlord oust him from possession?
- A. Yes.
48. Q. If a member of the tenant's family is seriously ill or the premises are quarantined at the expiration date of the lease, what redress does the lessor have?
- A. None, until the condition abates.
49. Q. If a property is leased at the time it is being sold, why should mention be made of it in the agreement of sale?
- A. Because a lease is an encumbrance within the meaning of the term.
50. Q. An owner of real estate, which is mortgaged, leases it to a tenant. The mortgagee forecloses and obtains title to the property. He then ousts the tenant from possession. Does the tenant have a right of action against the owner under such circumstances?
- A. Yes. The owner has violated the lease covenant of quiet and peaceful enjoyment to the tenant.
51. Q. Where a leased property is sold, who assigns the lease to the purchaser—the lessor or lessee?
- A. The lessor.
52. Q. Who is ordinarily liable for the payment of the utilities for leased premises?
- A. The lessee.
53. Q. In commercial leases what important clauses should be included for the lessor's protection?
- A. 1. Tenant to pay any increased insurance premiums due to lessee's use or occupancy of premises.
2. Tenant to pay any increased taxes during term of lease.
3. Subordination clause so that lessor may place a first lien mortgage upon the premises.

4. Tenant to carry plate glass insurance.
54. Q. A lease is drawn between P. Kelly and Kay Semel, beautician, for certain premises. Her father, Joseph Semel, has signed the lease as surety. Miss Semel, with the consent of her landlord, sub-leases the entire premises to Dorothy Adams. Is Miss Semel relieved from liability for the rent ?
- A. No. As the original lessee, she continues liable for rent during the term of the lease as she expressly covenanted to pay rent under the lease executed by her.
55. Q. In what ways may a lease be terminated ?
- A. 1. By performance; automatically terminates at expiration of term.
2. By surrender; mutual cancellation of lease before expiration of term.
3. By breach; act of lessor is known as an eviction; act of lessee is known as forfeiture.
56. Q. Under the terms of a valid lease, must the landlord keep his tenant safe from trespassing of others upon the leased premises?
- A. No; it is the duty of the tenant to enjoin such trespass.
57. Q. A property was held in the name of James Patz alone. He leased it to a tenant with an option to purchase. The wife of Patz did not sign the lease. The tenant exercised the option, but before consummation, Patz died. The wife refuses to execute a deed. What are her status and rights?
- A. Since the wife did not sign the lease containing the option, she could not be compelled to execute a deed. The tenant, accepting a deed from the executor, would take it subject to the widow's dower right. Of course, he can refuse to take such a deed, subject to the encumbrances of dower, and either sue the estate for damages or recover any money paid on the sales contract.
- Moral to Tenant:*—Have lessor's wife join in a lease containing an option to purchase clause.
58. Q. Can a tenant after leasing property for 25 years claim ownership by adverse possession against the heirs of the original lessor?
- A. No; occupancy was permissive throughout and not hostile or adverse.
59. Q. What articles belonging to others are usually exempt from a landlord's levy for delinquent rent ?
- A. Leased articles, such as furniture, soda water apparatus, ice cream cabinets, shoe repair machinery, cigarette vending machines, beauty and barber shop equipment, certain electrical apparatus and pianos, are exempt in some states, provided that notice of the leased article is given to the lessor.
60. Q. Whose liability is protection of plate glass windows?
- A. Usually that of the lessee.
61. Q. Joseph Gray leases a neighborhood store to the Craft Cleaning Company. Due to a labor dispute, violence occurs and the premises are damaged. Who is liable for the repairs?
- A. The tenant.
62. Q. Albert leases certain premises to Bold for a cigar store. In six months the place is raided five times as a "numbers joint." Court action is taken to padlock the premises. What is the status of rent for the unexpired period of the lease?
- A. The tenant would be liable for the rent. If the landlord had guilty knowledge that the premises were to be used illegally, the courts would not enforce the lease.
63. Q. Make up a rent receipt in which the Paul N. Smith Agency is the broker-agent and Helen Gardner is the tenant at 1223 Maple Lane, Salt Lake City, Utah. The rent is \$90 per month, with a \$5 discount if paid by the 10th of the month. The rent is payable on the first of the month and the March 1978 rent is being paid March 6, 1978.
- A.

Salt Lake City, Utah
March 6, 1978

Received of Helen Gardner
Sum of Eighty-five (\$85) Dollars,

for rent for month of March 1978
for premises located at 1223 Maple Lane, Salt Lake City, Utah.
Paul N. Smith Agency, Inc.
by Adele Trumper, Secretary

- 64. Q. Bates leased a warehouse to Chase on May 1, 1975 for a five-year term, with an option to purchase the property during the lease term at \$90,000. The property was totally destroyed by fire on June 16, 1977. It was rebuilt within nine months. Is the lease terminated?
A. Yes; the complete destruction of the building terminated the lease as of the date of the fire.
- 65. Q. What do you understand by "distrain is a statutory procedure"?
A. All steps must be strictly followed, such as notice, posting, appraisal, advertising and sale of tenants goods. Where a distress for rent statute was applied so that corporate tenant did not receive service of process upon its person, when it could be found within the State of Florida, the statute was unconstitutionally applied and the distraint was invalid: *Phillips v. Gruin and Hunt, Inc.*, 344 So. 2d 568 (Fla. 1977).
- 66. Q. What is an exculpatory clause in a lease?
A. It is a clause which releases and relieves the landlord from damages and claims, e.g., liability for injuries resulting in injuries to tenant upon the leased premises. It is a question for a jury whether there was such disparity in bargaining power between landlord and tenant as to make such clause void, as against public policy.
- 67. Q. Where a member of a minority group has been refused a lease on that account, can he recover damages for mental anguish?
A. Yes. (*Hinish v. Meier & Frank Co.*, 115 P. 2d 438 (Ore. 1941).
- 68. Q. A tenant, five months delinquent in rent, moves before expiration of the lease. He asks the owner to obtain a new tenant. The owner obtains a tenant at a higher rental. The first tenant then claims that the increase in rent for the balance of the term should be applied to his rent arrearages. Decide.
A. In favor of the first tenant, as decided in the case of *Wanderer v. Plainfield Carton Corp.*, 351 N.C. 2d 630 (Ill. 1976).

True and False

(Answers to this section are on pages 707-708.)

- 1. A lease is a contract. T F
- 2. A valid oral lease is assignable. T F
- 3. A lease given by a lessee to a third party is a release. T F
- 4. Leases may include fixtures along with the real estate. T F
- 5. A tenancy from month to month may be terminated at any time without notice. T F
- 6. An estate for years and a tenancy from year to year mean the same thing. T F
- 7. Every lease must be signed by the tenant. T F
- 8. The terms "tenant" and "lessee" are generally used in the same context. T F
- 9. A "tenant by sufferance" is one who is unable to remove from the premises at the end of the term because of serious illness. T F
- 10. Where a tenant has been transferred to another city by his employer, he may terminate his lease. T F
- 11. A sales clause in a lease means that the lease can be terminated in event of sale of the property by giving notice to tenant. T F
- 12. Where a sales clause has been exercised, the tenant is entitled to moving expenses. T F
- 13. An oral lease favors the tenant. T F
- 14. "First right of refusal" is the same as an option to purchase the property under a

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| lease. | T | F |
| 15. All leases over three years must be recorded. | T | F |
| 16. A tenant of a fourth-floor apartment finds that the elevator service is permanently discontinued. The tenant may move on that account. | T | F |
| 17. If the tenant fails to pay his rent when due, such action immediately terminates the lease. | T | F |
| 18. Joint tenancy means ownership of real estate, not the leasing of it. | T | F |
| 19. There are no covenants to be found in a lease. | T | F |
| 20. If the monthly rental is to remain the same, a long-term lease on real property need not be in writing to be enforceable. | T | F |
| 21. A lease stated that the rent was to be paid monthly, but did not specify that the rent should be paid in advance. In that case, the rent was due and payable on the last day of the month. | T | F |
| 22. When a lease of a store does not provide who shall make necessary repairs to the premises, the cost of such repairs falls upon the lessor. | T | F |
| 23. A lease is a <i>nudum pactum</i> . | T | F |
| 24. A lease for five years, signed and sealed only by an agent, does not bind the owner. | T | F |
| 25. An oral lease for one year is valid. | T | F |
| 26. Sale of a property terminates an existing lease. | T | F |
| 27. Lease of a property in any disrepair constitutes a violation of law. | T | F |
| 28. A lessee is the tenant. | T | F |
| 29. An agent's authority to execute a lease for more than three years must be in writing. | T | F |
| 30. A lease usually favors the tenant. | T | F |
| 31. A married woman has authority to execute a lease to property owned by herself and her husband. | T | F |
| 32. A lease must be for a money rental. | T | F |
| 33. An administrator of an estate cannot execute a lease for five years. | T | F |
| 34. The beneficiary of a trust estate must always join in the lease by the trustee. | T | F |
| 35. A lease for three years automatically renews itself for three more years if the tenant remains on the premises. | T | F |
| 36. A lease is assignable if there is no clause in the lease to the contrary. | T | F |
| 37. Sub-letting and assignment are the same. | T | F |
| 38. In an assignment the original lessee continues liable for the rent payments. | T | F |
| 39. A sky lease is one for space in a building above the 25th floor. | T | F |
| 40. A tenant is liable for ordinary repairs. | T | F |
| 41. The landlord is liable for repair of frozen water lines. | T | F |
| 42. A tenant can refuse to pay rent where the owner has failed to make repairs agreed upon. | T | F |
| 43. A lessor is liable for injuries where he leases any premises in a defective condition. | T | F |
| 44. A lessor is not liable for damages where he voluntarily makes repairs and does so negligently. | T | F |
| 45. A lease for five years need not be in writing if the tenant pays a substantial amount of rent in advance. | T | F |
| 46. The lease of a tenant in a store building expires if there is a change of ownership of the property. | T | F |
| 47. A lease on a property being sold constitutes an encumbrance on that property. | T | F |
| 48. A percentage lease is one based upon a percentage of the assessed valuation. | T | F |
| 49. On a percentage lease the monthly rental is always the same and does not vary. | T | F |
| 50. If a tenant does not pay his rent when due, the landlord may immediately treble the rent. | T | F |
| 51. A lease for less than one year need not be in writing to be enforceable. | T | F |
| 52. When a lessee rents to another a part of the property which he holds under lease, | | |

- he is "sub-letting." T F
53. City property may be leased for any period from one to 99 years. T F
54. In condemnation proceedings, the tenant is entitled to compensation for loss of his lease. T F
55. A 22-year lease on farm land is valid. T F
56. A lease is a bilateral contract which conveys the right of possession to real property. T F
57. A release clause is used when a tenant has secured an option to renew the lease for an additional term. T F
58. Where leased property is condemned by the municipality, the lessee has a right of action against the lessor for damages. T F
59. A landlord must keep his tenant safe from trespassing of others upon the leased premises. T F
60. A tenant in an apartment building must pay rent if the building is destroyed by fire. T F
61. A tenant in possession of the entire building is liable for injuries suffered upon the leased premises. T F
62. A lessor has no right to go upon the leased premises to show prospective purchasers the property unless the right is reserved in the lease. T F
63. A tenant is always entitled to the first right to purchase the leased property if it is for sale. T F
64. Where the landlord violates the lease, it is termed an eviction. T F
65. An estate for years is for some determinate period. T F
66. Where the leased property is taken under eminent domain, the tenant can recover for the value of his lease from:
- (a) the lessor. T F
- (b) the body or corporation condemning the property. T F
67. The Consumer Leasing Act, effective March 23, 1977, applied to real estate cases. T F
68. Rent is in default the day after it is due. T F
69. Where a lessor accepts delinquent rent for five months, he cannot refuse to accept rent for the next month because it is after the due date. T F
70. Rent controls apply to all leased properties. T F
71. A sales clause in a lease refers to the period of time a tenant must be given in order to terminate the lease. T F
72. Any dwelling lease can be terminated before its term if the property is purchased by a veteran. T F
73. A tenant for one year who holds over after the term would be a tenant for an additional year. T F
74. A verbal lease for one year with an option to renew for three years must be in writing. T F
75. A mortgagee in possession of leased premises cannot collect the rent unless he has written assignment from the owner. T F
76. A lessor may levy for rent upon a stranger's goods found upon the premises. T F
77. A tenancy at will can only be terminated by the tenant. T F
78. In case of ambiguity in a lease, it is construed most strongly against the lessor or his agent. T F
79. Where the premises are destroyed by an Act of God, the tenant is relieved from rebuilding. T F
80. On levying for delinquent rent, the lessor, or his agent, may break open an outer door in the tenant's absence. T F
81. Rent controversies are determined in a special "people's court." T F
82. A landlord is not liable for injuries suffered by the tenant due to a hidden defective condition of the premises. T F
83. A landlord is liable for injuries to a guest suffered in the collapse of a public

- building such as a grandstand. T F
84. Where the tenant defaults in the payment of rent, the landlord can terminate the lease and evict a sub-tenant as well as the tenant. T F
85. Where a landlord distrains for rent, he cannot, at the same time, terminate the lease. T F
86. The first floor tenant of an apartment house is liable for snow removal. T F
87. The law requires all leases to be in writing. T F
88. An estate for years is a leasehold. T F
89. Sale of a property for cash automatically cancels a month-to-month lease. T F
90. The term "tenants in common" refers to several persons who lease and occupy the same property. T F
91. A tenant who continues to occupy the premises after the expiration of the lease is called a hold-over tenant. T F
92. A landlord may send mechanics into leased premises to make alterations even though the lease contains no specific authority to do so. T F
93. Goods exempt from a landlord's distraint arise from statute. T F
94. A mortgagee in possession cannot lease the mortgage premises. T F
95. A lease by a mortgagee in possession can be terminated by the owner if he pays off the mortgage debt. T F
96. A lessor has a reversionary interest in the leased premises. T F
97. Act of God and accident by fire are the same. T F
98. A tenant is required to repair frozen water pipes. T F
99. The rule of "caveat emptor" applies to the tenant in leasing a property in a state of disrepair, if it is habitable. T F
100. A straight monthly rental, by tenant, is preferable to a percentage lease with a minimum monthly rental. T F
101. Where a lease contains a "first right of refusal" clause the tenant is certain as to what he will have to pay for the property if he elects to purchase it. T F
102. A landlord may terminate a lease where an unauthorized assignment of a lease by the tenant occurs. T F
103. There is an implied warranty that the lessee will enjoy quiet and peaceful possession during the term of the lease. T F
104. All goods found upon the leased premises are subject to a landlord's levy for delinquent rent. T F
105. A mortgagee in possession of leased premises has the same rights to distrain as an owner. T F
106. A mortgagee in possession must account to the owner for all rents received. T F
107. Tenancy at will refers to ownership rather than occupancy. T F
108. A freehold is an estate in real estate held under a lease. T F
109. A broker has the right to assign a lease for the owner to the purchaser, if the property is sold. T F
110. A broker's right to commission for rents ceases under a lease prepared by the broker containing a sales clause, when the property is sold. T F
111. An owner would be liable for injuries to a pedestrian injured due to a fall over a trap door. T F
112. Broken windows in a leased property are the tenant's responsibility. T F
113. A mortgagee of leased premises is more interested generally in the term of the lease than in the rental. T F
114. Before leasing premises to an unknown applicant, the broker should check with the applicant's previous lessor or renting agent. T F
115. A lessor is better protected by accepting a lease from a new tenant of presently leased premises than by permitting the present tenant to assign the existing lease. T F
116. The terms "leasing" and "listing" are used interchangeably. T F
117. A writing which transfers possession of real estate but does not transfer owner-

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| ship is a lease. | T | F |
| 118. The manager of an apartment building has authority to vary terms of a written release, upon complaint of a tenant. | T | F |
| 119. An option to purchase clause in a lease is generally preferable to a first right of refusal clause, from the lessor's standpoint. | T | F |
| 120. A tenant who installs a fancy chandelier in a rented property and destroys the old one, is permitted to remove it at the expiration of lease term. | T | F |
| 121. A deposit accepted by a broker on a vacant apartment obligates the owner to lease it to the party making the deposit. | T | F |
| 122. An eviction corresponds to a forfeiture as to breach of a lease. | T | F |
| 123. A tenant who continues to occupy the premises after the expiration of the lease is called a squatter. | T | F |
| 124. A release clause is commonly used in a lease. | T | F |
| 125. Failure by a tenant to pay his rent when due does not constitute a termination of his lease automatically. | T | F |
| 126. The terms of a written lease cannot be changed by a prior oral promise. | T | F |
| 127. In order that a landlord have the right to send mechanics into leased premises the lease must contain this authority. | T | F |
| 128. A lease given by a lessee is called a post lease. | T | F |
| 129. "Tenancy at sufferance" is leasing by one tenant to another. | T | F |
| 130. Dispossession of a tenant by a landlord is known as an eviction. | T | F |
| 131. Eviction is the violation of a material lease provision by the lessor. | T | F |
| 132. A landlord may send a carpenter into leased premises to make repairs even though the lease contains no specific authority to do so. | T | F |
| 133. A tenant who assigns a lease to a third party is still liable for rent, even though lease permits the assignment. | T | F |
| 134. In promoting social justice, more courts require leased premises to be habitable, despite provisions in the lease exonerating lessor. | T | F |
| 135. A lease of property which requires the lessor to pay all property charges through ownership is called a net lease. | T | F |
| 136. No lease is assignable unless it expressly grants this right to lessee. | T | F |
| 137. Ground rent is rent paid by an <i>owner</i> and not by the <i>tenant</i> . | T | F |
| 138. In community owned property, a husband alone can not execute a valid lease for more than one year. | T | F |
| 139. A "demising" clause may be found only in leasing contracts. | T | F |
| 140. "Graduated" lease can provide for a change in the rent to be paid, either lowering or raising the rent. | T | F |
| 141. A three-day notice to vacate is all that is necessary to evict a tenant who fails to pay his rent. | T | F |
| 142. A lease cannot be recorded unless it is acknowledged by lessor. | T | F |
| 143. A tenant at will can assign his lease. | T | F |
| 144. A tenant at sufferance can assign his lease. | T | F |
| 145. A lessee is one who gives a mortgage upon the property in return for a loan. | T | F |
| 146. "Tenancy at sufferance" is one in possession of property at the discretion of a court. | T | F |
| 147. Accident by fire and inevitable casualty do not mean the same thing. | T | F |
| 148. A fixture under a lease and a fixture in the sale of a residence mean the same thing. | T | F |
| 149. Ground rent is real estate. | T | F |
| 150. The legal return received from the use of property is called rent. | T | F |
| 151. An owner can compel a tenant to remove store shelving at the end of the lease term. | T | F |
| 152. The gross money expectancy from any income property is the gross income less the operating expenses. | T | F |
| 153. A writ of restitution must be obtained to evict a tenant for non-payment of rent. | T | F |

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| 154. A sub-lessee who sub-lets to another person is said to hold a sandwich lease. | T | F |
| 155. A lease given by an owner to a tenant is considered personal property. | T | F |
| 156. A lease may be terminated by lessor, where the premises are padlocked by court order for illegal sale of liquor. | T | F |
| 157. Parol testimony can always be introduced to explain the terms of a written lease. | T | F |
| 158. Under a net lease, the lessee is liable for increased property taxes. | T | F |
| 159. The manager of an apartment building is entitled to keep rebates on supplies purchased. | T | F |
| 160. If a tenant fails to surrender possession at the expiration of a lease term, he is always considered a tenant by sufferance. | T | F |
| 161. Rules and regulations in an apartment lease are of a contractual nature. | T | F |
| 162. Death of the lessor, during the term, terminates the lease. | T | F |
| 163. Unconscionability of a lease provision is tantamount to lack of freedom of contract. | T | F |

Multiple Choice

(Answers to this section are on page 708.)

1. A lease for 50 years is
 - (a) realty.
 - (b) personalty.
 - (c) lis pendens.
 - (d) a lease in perpetuity.
2. In the sale of a six-unit apartment building, all existing leases are usually
 - (a) cancelled.
 - (b) renegotiated.
 - (c) automatically renewed for one year.
 - (d) assigned by seller.
3. The manager of a multi-unit commercial building usually receives as compensation
 - (a) a straight salary.
 - (b) a percentage of net income.
 - (c) a percentage of gross income.
 - (d) a percentage fixed by the local apartment managers' association.
4. A property owned by William Rushton and Margaret Rushton, his wife, was leased by William, alone, to Commercial Sales, Inc., for a five-year term. Rent was paid for the first two years to William. The following rent for two months was paid to Margaret. William then brought a distraint action for breach of lease. Under these facts:
 - I. payment to the wife was satisfaction of the rent claim.
 - II. the court would hold that William acted for himself, and as agent for Margaret in executing the lease.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
5. Clark leases a commercial property to Monroe for a tavern, for a term of five years. Within the second year, Monroe is convicted twice by the Liquor Control Board for permitting gambling and selling liquor to minors. Clark brings an action to terminate the lease. Under these circumstances:
 - I. Clark's action is void because the rent is not in default.
 - II. Monroe can recover damages for an illegal termination of the lease.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

6. A lease for ten years would be considered:
 - (a) personalty.
 - (b) realty.
 - (c) a remainder estate.
 - (d) a freehold estate.
7. Which one of the following will not terminate a lease?
 - (a) Performance.
 - (b) Breach.
 - (c) Surrender.
 - (d) Vacancy
8. Which one of the following types of tenancies does not apply to a lessor-lessee relationship?
 - (a) Tenancy at will.
 - (b) Tenancy in common.
 - (c) Tenancy for years.
 - (d) Tenancy at sufferance.
9. When a leased property is sold, the sale has the following effect upon the tenant:
 - (a) Tenant must record lease in recorder's office.
 - (b) Tenant must obtain assignment from purchaser.
 - (c) No effect.
 - (d) Tenant must move out after 30 days' notice.
10. A tenancy at will is a
 - (a) form of partnership.
 - (b) tenancy of uncertain duration.
 - (c) inheritance of property by will.
 - (d) life tenancy.
11. Under a net lease, who is liable for the payment of increased property taxes?
 - (a) Lessor.
 - (b) Lessee.
 - (c) Sub-lessee.
 - (d) Both lessor and lessee.
12. The legal compensation or income received from the use of real property is called
 - (a) ground rent.
 - (b) interest.
 - (c) rent.
 - (d) owner's equity.
13. The owner of real estate who leases it to another is called
 - (a) vendor.
 - (b) lessee.
 - (c) lessor.
 - (d) optionee.
14. Which one of the following is ordinarily not essential to the validity of a month-to-month lease?
 - (a) Offer and acceptance.
 - (b) Consideration.
 - (c) In writing.
 - (d) Reality of consent.
15. A clause, in a lease, by which the lessor agrees with the lessee that the latter shall have the first right to purchase the property at the same price as offered by a prospective purchaser is called
 - (a) an option clause.
 - (b) first right of refusal clause.
 - (c) an election clause.
 - (d) a prime clause.
16. A lease cannot be recorded unless it is acknowledged by the

- (a) lessee.
 - (b) lessor.
 - (c) vendor.
 - (d) seller.
17. A landlord rents a store to a men's clothier on a "percentage lease." On which of the following is the percentage usually based ?
- (a) Market value.
 - (b) Assessed value.
 - (c) Tenant's gross sales.
 - (d) Tenant's net income.
18. When real estate under lease is sold, the lease
- (a) expires.
 - (b) is broken.
 - (c) must be renewed.
 - (d) remains binding upon new owner.
19. When a lease antedates a mortgage, and the mortgagee becomes the mortgagee in possession, the tenant must pay the rent to
- (a) mortgagee.
 - (b) landlord.
 - (c) court.
 - (d) himself and hold until foreclosure sale.
20. Adams leases property to Baker for a cigar store and pool room. Baker is arrested and convicted for permitting gambling on the premises and is fined \$500.
- (a) This action has no effect on the lease term.
 - (b) The lease can be terminated by the lessor.
 - (c) Lessor can sue for damages.
 - (c) Baker can assign the lease to Chase for use as a grocery.
21. When a tenant is delinquent in his rent under a written lease, the owner may have him evicted by
- (a) notifying the real estate commission.
 - (b) having the Office Housing Expeditor take legal action.
 - (c) giving tenant 30 days' notice.
 - (d) bringing court action.
22. Where a guest is injured on a leased dwelling, he may bring action (in most states) against
- (a) lessor.
 - (b) lessee.
 - (c) broker, who collects the rent.
 - (d) person, who has equitable title.
23. A one-year lease should be in writing
- (a) to make the agreement binding.
 - (b) to avoid misunderstandings.
 - (c) to benefit the tenant.
 - (d) to benefit the landlord.
24. Under a lease for three years, if the tenant remains in possession after the expiration of the term, the lease is
- (a) cancelled.
 - (b) renewed for three years.
 - (c) renewed for one year.
25. Where a leased property is changed to a different zone by the city
- (a) the tenant must continue to pay rent.
 - (b) the lease is terminated.
 - (c) the lessor must provide other accommodations.
26. A lease to be binding must be signed by the
- (a) broker.

- (b) beneficiary.
 - (c) lessor and lessee.
 - (d) lessee and broker.
27. Distraint is a proceedings to
- (a) prevent a tenant from removing.
 - (b) collect delinquent rent by lessor.
 - (c) impeach the lessor's title.
 - (d) prevent lessor from showing property to a sales prospect.
28. A lease may be terminated
- (a) if the lessor interferes with tenant's quiet enjoyment.
 - (b) if property is sold by lessor.
 - (c) if lessor becomes delinquent in his mortgage payments.
29. A lease by an infant lessor is
- (a) void.
 - (b) voidable by lessee.
 - (c) voidable by lessor.
 - (d) not renewable.
30. A pedestrian injured due to the negligent accumulation of snow and ice in front of an apartment building can recover damages from
- (a) the municipality.
 - (b) the real estate broker who negotiated the lease.
 - (c) the first-floor tenant.
 - (d) the lessor.
31. In a distraint for rent, leased counter equipment can be
- (a) claimed by owner of equipment.
 - (b) sold by lessor.
 - (c) claimed by tenant as his debtor's exemption.
32. Pedestrian traffic counts are usually taken to determine
- (a) urban population.
 - (b) size of shopping area.
 - (c) rental value of a location.
 - (d) average age group.
33. "Spot zoning" is usually determined by
- (a) lease contract.
 - (b) owner of property.
 - (c) city law department.
 - (d) Board of Adjustment.
34. A lease gives the tenant an option to purchase the property at \$40,000. The owner receives an offer from a third party at \$45,000.
- (a) Tenant can purchase property at \$45,000.
 - (b) Tenant can buy at \$40,000.
 - (c) Third party can buy it.
 - (d) Owner must pay tenant \$5,000.
35. A sub-lease is for
- (a) basement premises.
 - (b) a new tenant of the entire premises.
 - (c) a portion of the leased premises.
36. Leases cannot be recorded unless they are acknowledged before a proper official by the
- (a) lessee.
 - (b) lessor.
 - (c) assignee.
 - (d) vendor.
37. Where a tenant's furniture is damaged by water due to the negligence of an upstairs tenant, he can
- (a) refuse to pay rent until made whole.

- (b) move out if this happened before.
 - (c) complain to the city officials.
 - (d) bring a civil action against the upstairs tenant.
38. Where a tenant is delinquent in rent for many months, it is preferable for the lessor to
- (a) confess judgment for amount of rent.
 - (b) institute a landlord's levy.
 - (c) confess judgment for possession of premises.
 - (d) notify local credit association.
39. Where a four-room apartment is leased to a young couple and later the parents of the couple move in, the landlord can
- (a) do nothing.
 - (b) terminate the lease.
 - (c) increase the rent proportionally.
 - (d) require tenant to post bond against any damage.
40. Where a husband owner of real estate leases property for five years and dies shortly afterwards, the
- (a) lease is terminated.
 - (b) lease is carried out by Probate or Surrogate's Court.
 - (c) lease is taken over by devisee of leased property.
 - (d) court appoints licensed broker to administer lease.
41. A lease which requires the tenant to pay all expenses of the property in addition to his rent is called
- (a) a gross lease.
 - (b) an assigned lease.
 - (c) a percentage lease.
 - (d) a net lease.
42. Alberts verbally leases certain premises to Underwood for a term of one year. This lease is
- (a) void.
 - (b) enforceable.
 - (c) only a month-to-month lease.
 - (d) non-renewable.
43. When a commercial property is being offered for sale, and a tenant wishes to renew a long-term lease, the managing broker should renew the lease with
- (a) a percentage clause
 - (b) a cancellation clause.
 - (c) a distraining clause.
 - (d) an elevator clause.
44. According to the Statute of Frauds, a verbal lease for five years is
- (a) enforceable.
 - (b) not enforceable.
 - (c) assignable.
 - (d) renewable.
45. When a lease of a store does not provide who shall make necessary repairs to a stopped-up toilet, the cost of such repairs is borne by
- (a) the lessee.
 - (b) the lessor.
 - (c) the legatee.
 - (d) the insurance company.
46. Under a "net" rental agreement, the tenant generally meets all but one of the following charges
- (a) taxes.
 - (b) mortgage interest.
 - (c) plate glass insurance.
 - (d) liability insurance.

47. A percentage lease is a lease
 - (a) which provides for a percentage of rents to be paid to the broker as a commission.
 - (b) which covers only a certain percentage of property, where there are two or more persons sharing the premises.
 - (c) where rent is based on percentage of tenant's receipts.
 - (d) which covers the lending of money and interest charged thereon.
48. In case of a theft of a watch from a dresser in an apartment unit, state who is responsible:
 - (a) tenant.
 - (b) landlord.
 - (c) real estate broker, who collects the rent.
 - (d) security guard.
49. A tenancy at will is
 - (a) tenancy for a specified duration.
 - (b) possession of property under a will.
 - (c) life estate.
 - (d) none of the above.
50. A chain store firm in determining value of a site is motivated by
 - (a) spot zoning.
 - (b) pedestrian count.
 - (c) traffic count during and between 8:00 A.M. and 8:00 P.M.
 - (d) latest census figures.
51. Where a lessee holds farm property at the will of the lessor, he has a
 - (a) tenancy at sufferance.
 - (b) freehold estate.
 - (c) common of pasturage.
 - (d) holdover tenancy.
52. Where the lease fails to state when the rent is due and payable, it is due
 - (a) on the first day of each month.
 - (b) on the first day of the lease term.
 - (c) on the last day of the lease term.
 - (d) on the last day of each month.
53. Taking property into custody, or seizure of goods by due legal process is called
 - (a) an eviction.
 - (b) a forfeiture.
 - (c) an attachment.
 - (d) an action in trespass.
 - (e) none of these.
54. Cancellation of a lease by mutual consent of lessor and lessee is called
 - (a) Action of Rescission.
 - (b) Action of Revocation.
 - (c) Surrender and Acceptance.
 - (d) Lis Pendens action.
55. A real estate broker usually represents
 - (a) the lessor.
 - (b) an adverse party.
 - (c) lessor and lessee.
 - (d) lessee.
56. A document which transfers possession for recompense, but not ownership, is
 - (a) a special warranty deed.
 - (b) option.
 - (c) easement.
 - (d) lease.
57. An oral lease for five years is unenforceable under
 - (a) the Statute of Frauds.

- (b) statute of limitation.
- (c) under an Act of Congress.
- (d) the common law.
- 58. The Statute of Frauds is a law
 - (a) requiring certain contracts to be in writing.
 - (b) requiring a license to operate as a broker or salesman.
 - (c) regulating escrow accounts.
 - (d) regulating estates owning real estate.
- 59. Ground rent is a fixed rental
 - (a) paid for vacant property.
 - (b) rental paid on a parking garage.
 - (c) rental paid by a grantee to his grantor.
 - (d) paid by an upper tenant to first-floor tenant.
- 60. A tenant spends \$10,000 in improving the landlord's property. Annual taxes are then increased \$240. In this case:
 - (a) the tenant is liable for the tax increase.
 - (b) the tenant is liable for one-half of the tax increase.
 - (c) it depends upon lease provisions.
 - (d) the lease is terminated.
- 61. A lease which provides for a step-by-step increase in rentals at regular intervals is called
 - (a) an installment lease.
 - (b) a percentage lease.
 - (c) an open lease.
 - (d) a graduated lease.
- 62. A lease basing rental on portion of gross sales with a guaranteed minimum is
 - (a) percentage lease.
 - (b) net lease.
 - (c) acceleration lease.
 - (d) an ad valorem lease.
- 63. Net return on investment property is computed by deducting all expenses from
 - (a) gross annual income.
 - (b) gross annual income less depreciation.
 - (c) appraised value.
 - (d) market price.
- 64. Fixtures under the ordinary lease, at the expiration of the lease will be the property of
 - (a) lessor.
 - (b) lessee.
 - (c) mortgage.
 - (d) ground rent owner.
- 65. Accepting rebates on purchases of materials for an office building is unlawful for which ones of the following:
 - (a) owner.
 - (b) tenants.
 - (c) broker managing property.
 - (d) building manager.
- 66. A lease of part of the premises by a tenant to another party is
 - (a) assignment of lease.
 - (b) a release.
 - (c) sub-letting.
 - (d) an eviction.
- 67. The unlawful taking of possession of real estate from a person in possession is known as
 - (a) an ejectment.
 - (b) an eviction.
 - (c) ouster.
 - (d) recapture.

68. Under the law of landlord and tenant where the property is sold during term of lease, who is entitled to emblements?
- (a) Landlord.
 - (b) Tenant.
 - (c) Both landlord and tenant.
 - (d) New owner.
69. Dispossession of a tenant by a landlord unlawfully, entitles tenant to
- (a) a surcharge.
 - (b) a penalty.
 - (c) damages.
 - (d) reimbursement.
70. A life tenant may convey
- (a) a fee simple title.
 - (b) a perpetual easement.
 - (c) a tenancy per autre vie.
 - (d) none of these.
71. An "exculpatory" clause in a lease releases which one of the following, for water damage from bursting pipes?
- (a) Lessor.
 - (b) Sub-tenant.
 - (c) Lessee.
 - (d) Assignee of lease.
72. A lessor has the right to show the premises to a prospective purchaser, because
- (a) implied right under law of landlord and tenant.
 - (b) provision in the lease contract.
 - (c) he has a bona fide prospect.
 - (d) the showing is between 10 A.M. and 5 P.M.
73. A lease may be terminated:
- I. by performance.
 - II. by breach of either party.
- (a) I only.
 - (b) II only.
 - (c) by either I or II.
 - (d) neither I nor II.
74. Under a ten-year commercial lease, the lease can provide that the tenant:
- I. pay increased taxes.
 - II. pay for repairs.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
75. Which one of the following applies to a landlord-tenant relationship?
- (a) Tenancy in common.
 - (b) Tenancy at sufferance.
 - (c) Joint tenancy.
 - (d) Tenancy by the entirety.
76. A ten-year lease which provides for specified increases in rent from year to year is a
- (a) percentage lease.
 - (b) acceleration lease.
 - (c) graduated lease.
 - (d) unilateral lease.
77. The income received by the owner under a lease is known as
- (a) interest.
 - (b) ground rent.
 - (c) profit.

- (d) rent.
78. Johnson leased a dwelling to Adams for two years. At the end of six months, Adams abandoned the premises. Under these circumstances:
- I. Johnson can demand rent for the balance of the lease term.
 - II. Johnson can relet the premises to another tenant, as tenant at will.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
79. Adams was a tenant in an industrial building. Due to the loud noises from printing presses in the space of an overhead tenant, he refused to pay rent, claiming a constructive eviction. The landlord sued for rent. Under these circumstances:
- I. the landlord can recover the rent.
 - II. the landlord must abate the nuisance.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
80. A property was leased to a tenant for a "supermarket." During the term, the tenant assigned the lease for use as a ladies' apparel store. The landlord sued to evict the sub-tenant. Under these circumstances:
- I. the sub-tenant can be evicted.
 - II. the original tenant can be held liable for rent.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
81. An owner sued a tenant for nine months' unpaid rent under a lease "for the street level floor only." A fire occurred, rendering the leased space totally untenable. Under these circumstances:
- I. the tenant is liable for the rent.
 - II. the tenant must restore the leased premises.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
82. A lease for a bowling alley did not require the landlord to make any repairs. A severe rain storm flooded the building three feet deep. The bowling alleys were damaged beyond repair. The building itself suffered only minimal damage and could be repaired within one week. Under these circumstances:
- I. the tenant continues liable for rent.
 - II. the owner must restore the alleys.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
83. Aiken, owner of a shopping center, leased the entire complex, consisting of 30 units, to Balfour. Balfour, in turn, leased 26 units to separate sub-tenants. The prime lease contained a clause for assignment of rents of sub-tenants to Aiken. On May 2, 1974, Balfour was three months delinquent in his rent. Aiken, on that date, gave Balfour notice of cancellation of his lease. Balfour had deposited rents collected from sub-tenants in the Chelsea City Bank. Balfour owned the bank \$12,000 on several promissory notes, which were overdue. On May 15, 1974, the bank offset the money on deposit against Balfour's debts. Under these circumstances:
- I. the bank can offset the notes against the money on deposit.

- II. Aiken will receive the money for the unpaid rent.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
84. A tenant abandoned the premises used for manufacturing purposes, before the term has expired, but he continued to pay rent. The tenant left a water cooling system and certain electric systems, which he had installed and used in his manufacturing processes. The landlord contended that the equipment were fixtures, which became a part of the leased premises. Under these circumstances:
- I. the fixtures belong to the tenant.
 - II. there was no abandonment of the lease.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
85. An apartment was rented for one year. The tenant remained over for a second year. Near the end of the second year, the owner notified the tenant and the other eleven tenants to vacate their units at the end of the month, as the leases would not be renewed; and that eviction would be brought if they remained for a third year. The tenant claimed that the owner was retaliating against them, because they had filed complaints alleging city housing and building code violations. In a suit:
- (a) owner will win.
 - (b) tenants will win and the lease will be renewed for one year.
 - (c) tenants can remain over for only one month.
 - (d) the rent of the tenants will be reduced on a quid proqui basis.
86. A two-year lease provided that the lessor could terminate the lease upon five days' written notice for non-payment of rent. During the first year of the lease, lessee was frequently delinquent in his monthly payments, but they were accepted by the lessor, without objection. Subsequently, upon a default, the lessor gave written notice by certified mail to the lessee that the lease was terminated for non-payment of rent. Lessor sought to evict the lessee.
- (a) The lessee will win.
 - (b) The lessor will win.
 - (c) The lessor can only recover the rent plus a penalty.
 - (d) The lease will become a month-to-month lease, and lessor can collect the delinquent month.
87. A tenant was delinquent for four weeks in rent on a one-year lease with rent payable weekly. During the tenant's absence, the landlord entered the premises and changed the entrance lock. The tenant was unable to enter her apartment. She sued for damages.
- (a) The tenant cannot recover.
 - (b) The tenant can recover.
 - (c) The tenant will have free rent for the remainder of the term.
 - (d) The tenant can recover nominal damages, since she suffered no physical harm.
88. Gaines leases a commercial property to Haines and Jackson, who sign as joint tenants. The lease contains an option to purchase the property, during the term of the lease, but will permit Jackson to remain as tenant during the remainder of the lease term. Under these facts:
- I. Haines, alone, cannot exercise the option.
 - II. Haines can exercise the option, but Jackson can remain as a tenant.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

89. On April 25, 1977, Adams, broker, negotiated the sale of an apartment building from Cole to Dale for \$215,000. He represented that the heating and cooling system were in excellent condition. However, in the summer and later, in the winter, it developed that major repairs were necessary, entailing a cost of \$13,725. Dale sues Adams, who contends that Dale had a duty to exercise reasonable care in his examination of the premises, and is guilty of contributory negligence in failing to do so. Under these facts:
 - I. Dale can recover from Adams.
 - II. Dale can recover from Cole.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
90. In a net lease, the lessee is usually required to
 - I. pay all taxes assessed against the leased property.
 - II. pay all utilities.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
91. In a lease to a mercantile establishment, it is preferable, from the standpoint of the lessor, to have
 - (a) a straight lease, with a no assignment clause.
 - (b) a percentage lease, on volume of sales, with a minimum rent provision.
 - (c) a net lease.
 - (d) a first right of refusal clause.
92. A surrender and termination of a commercial lease, prior to the expiration date, depends upon
 - (a) the decrease in pedestrian traffic.
 - (b) the change in the traffic pattern, due to the creation of a nearby new four-lane road.
 - (c) the mutual agreement of lessor and lessee.
 - (d) the development of a giant shopping center one-half mile distant.
93. A commercial lease in a shopping center usually requires the lessee to
 - I. pay the same monthly rental stated in the lease.
 - II. pay a percentage based upon the gross volume of sales over a certain minimum amount.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
94. Andrew Howell and Donald Lang are co-tenants under a lease from Carl Gerald, which contains an option to purchase the leased property for \$110,000 cash during the term of the lease, expiring December 31, 1979. On January 3, 1978, Lang notified Gerald, in writing, that the option will be exercised on June 15, 1978. On the latter date Howell is not willing to exercise the option. Gerald enters suit against the co-tenants to consummate the transaction. Under these facts:
 - I. Gerald will succeed in his suit.
 - II. the lease will be terminated on January 3, 1978.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
95. In a commercial net lease, the tenant would
 - I. pay a fixed monthly rental and a percentage of the gross volume of the business.
 - II. pay the taxes, make repairs, and pay a fixed monthly rental.

- (a) I only.
- (b) II only.
- (c) both I and II.
- (d) neither I nor II.

VALUATION AND APPRAISAL

Basic Valuation Concepts¹

PROPERTY valuation may be considered as the heart of all real estate activity. Only a practical understanding of real estate valuation will enable real estate brokers and salesmen to carry out their functions in a useful and dependable manner in serving their clients and in meeting their obligations to the general public.

Even though they may not qualify as expert appraisers, brokers and salesmen should be familiar with the theoretical concepts of value, the forces which influence values and the methods by which such values may best be estimated. Such a knowledge is essential in arriving at a logical solution as to the highest and best, and hence the most profitable, use of property.

It is a daily occurrence for the real estate broker to be asked by clients about the fair market value, a fair price, a fair rental, a fair basis for trade, or a proper insurance coverage for property. He needs to know how to answer such questions intelligently. To be successful in business, he must determine whether he can profitably spend his time in trying to sell a property at a listing price which the owner sets. In this regard he must keep in mind that in accepting a listing he obligates himself to put forth his best efforts to find a buyer for the property.

Value designations

There are many different designations or definitions of value. They may be divided into the following two main classifications: (1) *Value in use*—or, the special value to the owner or user. This frequently is termed *subjective* value, and it includes a valuation of amenities which attach to a property. (2) *Market value*—or value in exchange. This is the price at which property can be sold or exchanged at a given time or place as a result of market balancing. It is based on a “willing-buyer” and “willing-seller” concept. This is frequently termed the *objective* value.

Value of property most generally means the market value. Market value is said to be the price in terms of money for which a property would sell in the open market, seller not being obliged to sell, the buyer not being obliged to buy, with a reasonable length of time to effect the sale. This also supposes that both seller and prospective buyer are fully informed of all uses to which the property is adapted and for which it is capable of being used. Value is what the property is worth. Price is what someone actually paid for the property. It may or may not be the same as the value.

Among the various types of value that have been designated from time to time are book value, tax value, market value, cash value, capital value, speculative value,

¹ The text material on Valuation and Appraisal, in the main, has been taken from the State of California Reference Book and Guide with permission of the California Real Estate Department.

par value, true value, exchange value, reproduction or physical value, replacement value, insurance value, investment value, rental value and cost value.

Value can be distinguished from "cost" as well as from "price." The principal differences may be explained as follows:

(a) Value has to do with the combined factors of present and future anticipated enjoyment or profit. The value sought in the appraisal of property may be said to be the present worth of all desirable things (benefits) which may accrue from a skillful use of it. A conclusion in regard to these things will clearly be a matter of opinion—an intelligent estimate based on a thorough analysis of all available influencing factors and on reasonable and more or less warranted assumptions.

(b) Cost represents a measure of past expenditures in labor, material or sacrifices of some nature. While cost may be, and frequently is, a factor upon which value is partially based, it need not be, as it does not control present and future value. An example of this fact is the value of an oil well, which in one case may prove to be a big producer and of great value, while in another case may prove to be a dry hole and of no value, although both may have cost the same to develop and drill.

(c) Price is what one pays for a commodity. Usually it is considered to be the amount of money involved in a transaction. Whether we receive in value more or less than what we pay for will depend on the soundness of judgment in appraisal of value, or upon fortuitous future developments. Under an efficient market structure, prices will usually tend to equal values, varying only as buyers and sellers have unequal knowledge or economic strength.

Purposes and characteristics of value

The purpose of an evaluation or an appraisal is usually indicated in the value concept employed; for example: assessed value, condemnation value, liquidation value, cash value, mortgage loan value, fire insurance value, etc. The type of value sought frequently dictates the valuation method employed and influences the resulting estimate of value.

There are only three elements of value, all of which are essential. These are utility (the capacity to satisfy a need or desire), scarcity and demand (coupled with purchasing power). None alone will create value. For example, a thing may be scarce but, if it has no utility, there is no demand for it. Other things, like air, may have great utility and may be in great demand, but are so abundant as to have no commercial value. Likewise, the commodity must be transferable as to use or title to be marketable. Generally speaking, a commodity will have commercial or marketable value in proportion to its utility and relative scarcity. Utility creates demand, but demand, to be effective, must be implemented by purchasing power.

Fundamental to the concept of value is the idea of the "highest and best use." This can be defined as follows: The highest and best use is that use which is most likely to produce the greatest net return over a given period. Sometimes "net return" takes the form of amenities, but more usually it is thought of in terms of money. The "given period" may be dependent on the purpose for which the property is desired. For example, the "given period" to be analyzed would be shorter for a speculative venture than for a long-term investment.

Location is also a factor. For example, a site in a downtown district of a city which could most profitably be used for a time as a parking lot without improvements might later become more desirable as a location for a new commercial structure. In addition, any analysis to reach a decision as to the "highest and best use"

must include consideration as to the future supply and demand for such use within the area and a possible oversupply with attendant decrease of market value.

Special Forces Influencing Value

The value of real estate is created, maintained, modified and destroyed by the interplay of the following four great forces:

(a) Social ideals and standards. Examples of social forces include: population growth and decline, marriage, birth, divorce and death rates, attitudes toward education, recreation, and other instincts and yearnings of mankind.

(b) Economic adjustments. Examples of economic forces include: natural resources—including location, quantity and quality, industrial and commercial trends, employment trends, wage levels, availability of money and credit, interest rates, price levels, tax loads, etc.

(c) Political or governmental regulations. Examples of political forces include: building codes, zoning laws, public health measures, fire regulations, government guaranteed loans, government housing, credit controls, etc. Each and every one of these many social, economic and political factors affects cost, price, and value to some degree. The three of them interweave and each one is in a constant state of change.

(d) Physical forces. Examples of physical forces include: climate and topography, soil fertility, flood control, mineral resources, soil erosion, sub-surface conditions, etc.

Factors influencing value

Directional Growth. In any estimate of value, attention should be paid to “the city directional growth.” The city directional growth refers to the manner and direction in which the city tends to grow. Properties in the direction of growth in different sections of the city tend to increase in value, especially if the growth is steady and rapid.

Location. This includes access. This factor of valuation is often measured by traffic counts, which, in turn, have to be interpreted in purchasing power as well as volume of traffic. A property must have access by street, right-of-way, easement, alley or other means, to have value.

Utility. This is the capacity to satisfy a need or desire. This important factor involves judgment as to the best use to which a given property may be put. Building codes, zoning ordinances, and other public and private restrictions affect utility.

Size. The width and depth often determine the possibilities and character of use.

Shape. Parcels of land of irregular shape cannot usually be developed as advantageously as rectangular lots.

Thoroughfare Conditions. The width of streets, traffic congestion, condition of pavement all affect the value of those properties fronting any given street.

Action of the Sun. The south and west sides of business streets are usually preferred by merchants, because the pedestrian traffic seeks the shady side of the street in warm weather, and merchandise displayed in the windows is not damaged by the sun.

Character of Business Done. The larger cities develop retail, financial, wholesale, and commission-house districts, and women’s and men’s shopping sections, for the cheap, medium and high-grade trade.

Social Atmosphere in Residential Districts. The quality of the neighborhood has a direct bearing upon the values of properties within it.

Plottage. This is the *added* value of several parcels of land when brought under one ownership making possible a higher utility than could be found for the parcels considered separately.

Proportion of Depth to Width. This is important in determining the best uses to which a given property may be put. A lot must be of usable width and depth to have value.

Character of the Soil. Almost always a critical factor in agricultural property and frequently important in other types of properties.

Conspicuousness. Largely a factor of publicity value, and becomes of great importance to businesses depending upon advertising.

Grades. These vary from level land to hillside properties.

Obsolescence. A form of depreciation (loss of value reproduction or replacement cost new). It is divided into *functional* obsolescence, caused by changes in types of construction, design and/or interior arrangement, and *economic* obsolescence, caused by factors outside the property itself. Functional obsolescence can be either curable or incurable; whereas, economic obsolescence is almost always incurable.

Appreciation. A sustained trend of rising costs in labor and materials has caused appreciation in nearly all cases to be more rapid than total accrued depreciation.

Building Restrictions and Zoning. These sometimes operate to depress values and at other times to increase values. For example, there may be a vacant lot on a residential street which will sell for only \$50 a front foot for residential use, but would sell for \$300 per front foot as an apartment site. Or a vacant lot in a zoned area may sell for more per foot as a business site because of the supply of business sites being restricted by zoning. Many other examples might be given.

Residential property

In appraising single family residences, the most important consideration is the market comparison (also known as the “market data” or “comparable sales” approach, i.e., comparing the property to be appraised with similar or “comparable” properties which have been sold recently).

The “cost approach” may also be used under proper circumstances, especially where the structure is fairly new. This approach involves estimating the reproduction or replacement cost of the improvements, deducting the accrued depreciation (loss of value) and adding the land value.

Industrial property

Industrial lands are usually valued on an area basis—small plots by the square foot and larger tracts by the acre.

Topography. The topography of undeveloped land is of importance, and consideration should be given to the cost of grading, if required.

Subsoil. The character of the subsoil is frequently overlooked, and yet may be vital. Quicksand, rock, or other characteristics may make a certain site impossible for a given industry. Drainage also may be a vital factor.

Plottage Value. There is an added or plottage value from assembling lots into a reasonable-sized industrial site, but on the other hand, it is generally recognized that an area of unusual size has a lesser unit value, in the same way that the value per square foot of a commercial lot decreases, according to any of the published tables, with increased depth.

Track Layouts. In the study and valuation of unimproved, but potentially valuable, industrial lands, the assistance of a competent engineer, familiar with plant and track layouts, is frequently a decided advantage.

Agricultural or farm lands

In estimating the value of agricultural land, the nature and long-term trend of prices for the crop which is grown or intended to be grown is probably the chief determining factor. If the property is to be used for a dairy farm, then the character of the soil, whether suitable for hay and grain, water supply for the cattle and crops, proximity to markets, climatic conditions, labor conditions in the district, breed of cattle and their general conditions are extremely important. If the land is to be used for fruit growing, then it is essential to ascertain if the water supply is ample, if the land is suitable for the type of crops to be grown, if the cost of water is not excessive, a full knowledge of climatic conditions, with special reference to frosts and production against frost, age and condition of the trees, their past production, market conditions, labor conditions, and the price of produce in past years.

If the land is to be used for vineyard or root crops such as truck gardens, then consideration must be given to suitability of the soil, water supply, the cost of water, proximity to markets, labor supply and climatic conditions.

Generally, in agricultural land evaluation, it is also well to remember that all fruit and nut trees under four years of age from time of planting in orchard form, and all grape vines under three years old from time of planting in orchard form, and all growing crops are exempt from taxation.

Farm land valuation is highly specialized and often requires the assistance of soil and crop experts.

Appraisal Methods and Techniques

Definition of appraisal

To appraise means to arrive at an estimate of the value of a property. An appraisal is the appraiser's opinion of the value, as defined by the appraiser, of a parcel of property as of a specified date. It is a conclusion which results from the analysis of facts.

Real estate appraising is being definitely standardized by virtue of the experience and practice of persons in organizations in all parts of the country who encounter the same class of valuation problems, and who, by various methods and processes, succeed in solving them in a scientific way. It is natural that differences of opinion exist as to the value of real estate and the means of estimating its value in specific cases.

Methods of appraising properties

It is generally accepted that there are three ways to approach a value estimate. These methods or types of approach are:

1. *Comparison (or Market Data) Approach.* A comparison is made as to market level, location and physical characteristics, in relation to other comparable properties sold recently.
2. *Cost (or Summation) Approach.* In this approach, accrued depreciation is deducted from the cost of reproducing or replacing the improvements. To this depreciated value is added the value of the land, estimated by means of the comparison (market) method or any other recognized technique.
3. *Capitalization (or Income) Approach.* In this approach, value is estimated on the basis of its relationship (capitalization rate) to the net income which the property produces or ought to produce.

Frequently, the skilled appraiser will use all three methods in appraising a given property. No single method of approach by itself can always be depended upon to produce reliable estimates. Each appraisal must be solved after analyzing the special problem which is being presented.

Not only does every piece of real estate differ in some respects from all other properties, but there are many different reasons for which an appraisal may be made. The specific type of value sought will also affect the valuation. For example, insurable value, used for insurance purposes, will invariably be higher than fair market value. The nature of the property, whether non-investment, investment, or service; the purpose of the purchase, whether for use, investment, or speculation; and the reason for the appraisal, such as sale, loan, taxation, insurance and the like, all constitute matters which will influence the approaches used and the weights accorded them.

The first step in any appraisal procedure is to have a clear understanding of the reasons for making the appraisal and the objective to be sought. The adequacy and reliability of available data also are determining factors in the selection of the specific approach method or methods to be employed. A lack of certain pertinent or up-to-date information may well eliminate an otherwise possible approach method.

In other instances, proper procedures may call only for an appropriate discounting of conclusions drawn from such data. Thus, based on its adaptability to the specific problem, one method is usually given greater weight than the other approach methods.

In most appraisals, all three approach methods will ordinarily have something to contribute. Each approach method is used independently to reach an estimated value. Then as a final step, by applying to each separate value a weight proportionate to its merits in that particular instance, conclusions are reached as to one appropriate value. This procedure is known as correlation.

For the real estate broker or salesperson dealing primarily in single family residences, a good understanding of the advantages and disadvantages as well as the limitations of the market data (comparison) approach is especially desirable. However, there will be situations where this approach cannot be relied upon exclusively for reaching a reasonable estimate of value. Consequently a reasonable understanding of the proper procedures and application of all three approaches is necessary for the well-qualified real estate broker.

We will now proceed to elaborate on and examine more closely the three approaches to value.

Market Comparison (Comparable Sales)

This approach is most generally adaptable for use by real estate brokers and salespersons. It lends itself well to the appraisal of land, buildings, and residences which exhibit a high degree of similarity, and for which a ready market exists. It is also particularly applicable as a check against the other methods of appraising all types of properties where the market value is the end result being sought.

The mechanics of the process involves the use of market data of all kinds in order to compare closely the property being appraised with other similar properties. The sources used include actual sales prices, listings, offers, rents and leases, and an analysis of social and economic factors affecting marketability.

Some of these prices are obtainable from the appraiser's own records, financial news services, classified advertisements, abstract companies, and state revenue stamps. In the latter case, while a price may be calculated from the value of the revenue stamps, this figure must be accepted with caution. It may not represent

the actual price because no maximum limit is set as to the number of stamps which may be purchased. Thus, to create the impression of high prices, more stamps may have been used than are actually required. On the other hand, the price paid may be much more than is indicated by the stamps used as these may represent only the equity consideration involved. Again, in cases of property exchanges, it may be to the mutual advantage of the interested parties to understate or overstate the transaction price for tax or other purposes.

Listing prices may often indicate the probable top market value, while bid prices may normally indicate the lowest probable value. Both are subject to variation based on motivation, but a reasonable number of such figures will provide a bracket within which a current fair value will be found. Offers are likely to approach market values more closely than are listings which frequently are made to test the market. However, an offer to purchase is not usually a matter of common knowledge.

The procedure used in the market data (comparison) approach method is to assemble data concerning sales and other market data of comparable properties. The greater the number of good comparisons used, the better should be the conclusions which may be drawn therefrom. The approach is based on the assumption that property is worth what it will sell for in the absence of undue stress, if reasonable time is given to find a buyer. For this reason, the appraiser should look behind sales and transfers to ascertain what influences may have affected sales prices—particularly if only a few comparisons are available.

Proper comparisons between properties should be based on an actual and thorough inspection of such properties. For nearly comparable properties, penalties should be assessed against the property being appraised, for poor repair, freakish design, existing nuisances, etc. Conversely, additional values should be imputed to the subject property for attractive design, view, special features, better condition, higher quality of materials, landscaping, and the like. Unless the sales being compared are of recent date, consideration must also be given to adjusting values in keeping with changes in the real estate market since such dates.

Some of the advantages of using this approach method are as follows:

1. It is the simplest of the various methods to learn and to use. The factor of economic obsolescence of the neighborhood presumably is included in the value as set by the market.
2. It is particularly applicable for appraisal purposes involving the sale, exchange and loan transaction of single family residences. These make up the great bulk of real estate transactions. It is valuable as a check against the values determined by the other approach methods.

Some of the disadvantages of the comparison approach method are as follows:

1. Its reliability is greatly reduced by the lack of suitable comparisons. These must be adequate in number, reliable as to source, and sufficiently recent to justify reasonable conclusions to be drawn from them.
2. Being based primarily on current or short-term values, it is influenced by temporary market fluctuations, and may not satisfactorily forecast long-range values.
3. Scattered comparison may exaggerate or disregard special influences that have affected sales prices.
4. Individuals using this approach frequently neglect to make enough inspections to get a true comparison of values between the properties being used for this purpose.

Cost (or summation) approach

In estimating the cost of reconstructing the improvements on the date of the appraisal, the appraiser may estimate either their reproduction or their replacement cost. There are advantages and disadvantages to both methods.

Reproduction cost is the cost of faithfully reconstructing the improvements precisely as they are; it is the cost of reconstructing the exact improvements being appraised. However, because of the changes which have taken place in design, materials and construction methods since the building was erected, reproduction cost will usually include a measure of functional obsolescence which must be considered in the estimate of depreciation. The older the building, the more obsolescence of this type will have occurred.

Replacement cost, on the other hand, is the cost of replacing the building being appraised with one having equivalent utility and amenities. It is the cost of erecting a building of its type, employing the design, materials and construction methods normally used in construction on the date of appraisal. Substituting modern construction features for the obsolete ones in the building being appraised has the advantage of eliminating the necessity for estimating functional obsolescence. On the other hand, it is open to the criticism that, although it does represent how this building would probably be erected on the date of appraisal, it is not the actual building being evaluated. This criticism is particularly applicable if the building has considerable age.

The result of the respective advantages and disadvantages of the reproduction and replacement cost methods is that appraisers variously use one or the other.

The cost approach is based upon the principle that people will ordinarily not pay more for a property than it would cost to duplicate it in its condition on the date of appraisal.

Sequential steps in the cost approach are as follows:

- (a) An independent estimate is made as to the value of the land. This is always the current market value of the land, considered as vacant and available for improvement to its highest and best use. This value is not necessarily related to the actual cost when purchased.
- (b) An estimate is made as to the reproduction or replacement cost new (as of the effective date of the appraisal) of all improvements on the property. Accuracy requires the application of principles of building cost estimating, including the taking of an inventory of the materials and manufactured equipment making up the property and then applying to this inventory the current prices of similar materials, equipment, labor costs and all overhead costs which would be necessary to construct a suitable replacement of the improvements as of the appraisal date. The methods used in such estimates vary from the very technical and detailed procedures used by contractors and mortgage loan companies, to the simpler shortcut methods such as the comparison methods, which are used by most appraisers.

To use the simpler methods, an estimate of total cost is made by comparison with other similar buildings whose costs are known and have been reduced to units per square foot of floor area of living space or per cubic foot of the building content. Applying these costs to the actual area or content of the property under appraisal will give an approximate undepreciated (new) valuation, provided the data as to costs are accurate and the buildings and improvements are similar as to quality

and design. Corrections must be made for such differences as well as for changes in cost levels which may have taken place between the date of basic costs and the date of the new estimate.

Cost figures are also obtainable from local contractors or from numerous services which publish building costs. Actually, building costs will vary considerably, based on the efficiency of the builder and the amount of profit which is included in such costs. There is a great variation also in the quality and design of structures, so that unless the appraiser is experienced in such matters, his estimate of value may be inaccurate.

- (c) The third step in the cost approach method is to determine the accrued depreciation of the property. This amount must be deducted from the reproduction or replacement cost new to determine the depreciated value of all improvements. The difficulties of correctly estimating depreciation tend to increase with the age of the property and require skill, experience, and good judgment. A value determined by using the cost approach is no more reliable than is the estimate of depreciation. There is no justification in assuming that improvements necessarily depreciate at a rate corresponding to their age, although all too frequently this simple method is employed by the inexperienced appraiser.
- (d) The final step in the cost approach method is to add the value of the land, as determined in (a) above, to the depreciated cost, (b) and (c) above. This is the source of the term, "Summation Approach."

The cost approach is particularly appropriate for appraising newly built properties where depreciation is incidental. It is also the most appropriate approach method for public service properties, such as schools, hospitals, libraries, etc. These have no active market, and thus lack market data which can be used for a comparison approach, and there is no income on which to base an income or capitalization approach.

Capitalization (Income) Approach

The income approach is concerned with the present worth of future benefits of property. This method is particularly important in the valuation of income-producing property, although rarely can it be taken as the only pertinent approach. It is usually measured by the net income which a fully informed person is warranted in assuming the property will produce during its remaining useful life. An exception, where gross income may be used rather than net income, is found in the appraisal of one- or two-family residences by using a gross rent-multiplier. Such property normally is not considered as income property, as this was not its original purpose or function.

The procedure used in the capitalization approach involves the following three main steps:

- (a) A net annual income is derived, preferably over a period of years, by deducting total expenses from gross income. Unless such figures have remained fairly constant, it is important that trends in income and expenses be taken into account in forecasting future net income. The existence of current excessively high profits should indicate the probability of early competition and the lessening of future profits.
- (b) A selection is made of an appropriate capitalization rate or present worth factor. This is the crux of the matter and is a most important step.

The rate is dependent upon the return which investors will actually demand before they will be attracted by such an investment. The greater the risk of recapturing the investment price, the higher will be the accompanying rate as determined in the market for such properties. By analyzing market prices, these rates can be approximated at any given time.

A variation of only 1 percent may make a substantial difference in the capitalized value of the income. For example, based on an annual net income of \$30,000, and a capitalization rate of 5 percent, the resultant capitalized property valuation would be \$600,000. Capitalizing this same income at a rate of 6 percent would result in a value of only \$500,000 in valuation due to a difference in the capitalization rate of only 1 percent.

(c) The final step after having determined the net income and the capitalization rate is to capitalize the income. This may be merely a mathematical calculation of dividing the income by the rate if an overall rate is used. For example, the valuation of property which has an annual income of \$30,000 and a capitalization rate of 5 percent is \$600,000. The lower the rate, the greater the valuation and the greater the assumed security of the investment. So-called annuity tables are used in capitalizing fixed incomes for fixed periods.

An important element in all capitalization rates is provision for a return of the investment in the improvements to the property during their remaining economic life. This may be called an amortization or "recapture" of such investments. It may be provided for by straight-line depreciation, which recovers a definite sum every year for the period of years estimated to be the economic life of the improvement, at the end of which time the cost of replacement will be accrued. It may also be provided for by other methods, such as establishing "sinking funds," or a declining balance depreciation. These are more technical procedures which are used by professional appraisers.

In the hands of those who are familiar with its use, the capitalization approach may be helpful in determining the value of vacant land. This is accomplished by calculating probable incomes that would result if the property were used for different purposes and permits a determination of the most profitable or highest and best use of the land.

The technique used is known as the "land residual process." It seeks the capitalized value remaining in property after deductions are made for a return *on* and a return *of* the investment in the improvements alone.

The capitalization approach is particularly advantageous where insufficient market data are available for proper use of the market data approach.

Income (capitalization) approach applied. In determining the value of an income-producing property, one method that the appraiser may use is:

1. Estimate the adjusted gross income of the land and buildings, making proper allowances for vacancies and collection losses;
2. Ascertain the correct amount of all taxes;
3. Ascertain the annual cost of adequate insurance;
4. Estimate the annual stabilized operating expenses (utilities, maintenance, management, etc.);
5. Estimate an annual amount of reserve funds for necessary replacement of equipment or furnishings prior to the end of the estimated economic life of the building;
6. Compute the net income of the entire property before recapture by deducting items 2, 3, 4, and 5 from item 1;

7. Capitalize the remainder at a reasonable rate according to the risk involved, which will result in a valuation of the property as a whole.

Example: 10-unit apartment house—4 years old. Each apartment presently leased at \$100 per month.

10 × \$100 = \$1,000 per month or \$12,000 per year		
Proven vacancy factor—10 percent		
10 percent × \$12,000 = \$1,200 per year		
\$12,000		
<u>− 1,200</u>		
\$10,800	Effective gross income (adjusted for vacancy factor)	
Expenses (annual)—	Management	\$1,200
	Taxes	960
	Insurance	240
	Utilities	600
	Reserve for Replacements	<u>+ 400</u>
		\$3,400
\$10,800 Gross Income		
<u>− 3,400</u>		
\$ 7,400 Net Income before recapture		
Overall Capitalization Rate—8 percent	$\frac{\$7,400}{.08}$	= \$92,500 Valuation

If it is desired, a valuation for the land alone may be arrived at through the following additional steps:

8. Compute the interest on the value of the improvements today, at a reasonable rate, according to the risk involved in the building investment only;
9. Compute annual “recapture” necessary to return owner’s investment in improvements to him;
10. Deduct items 8 and 9 from item 6 above and capitalize the result at a rate justified by the risk involved in the land investment only, which will result in a value for the land alone.

In computing the net income from an apartment house there are several major items for deduction from the gross income to indicate the net income. Major items are:

- (a) Taxes;
- (b) Insurance;
- (c) Repairs;
- (d) Depreciation on furniture (if furnished);
- (e) Vacancies and collection losses;
- (f) Management;
- (g) Reserve for replacements.

Gross multipliers

Since much of the business in real estate has to do with the sale of middle-aged and older residential property, the real estate broker and salesman should understand the use of the “gross multiplier” to assist in appraising such rent properties on

the basis of value in capitalization. This method is based upon the market relationship between rental value and the sale price of such properties. For instance, a certain type of property might be generally sold at 100 times the monthly gross income. Prices determined by gross multipliers are usually considered as general indications of value only and not as a substitute for actual appraisal.

In summarizing it may be said the market data (comparison) method is the most widely used of all valuation methods. Investment property is frequently appraised by the income capitalization method while the replacement or reproduction cost method lends itself to special valuation problems. The methods are sometimes used independently and at other times concurrently as modifiers or checks.

Depreciation

In connection with the appraisal of real property, depreciation is defined as "loss in value for any cause from reproduction cost new." It is customarily measured by estimating the difference between the current reproduction cost new and the estimated value of improvements as of the date of appraisal.

Depreciation includes all of the influences that reduce the value of a property below its replacement cost new. The principal influences are often grouped under three general headings and subdivided as follows:

1. Physical deterioration, resulting from:
 - a. Wear and tear from use;
 - b. Negligent care (sometimes termed "deferred maintenance");
 - c. Damage by dry rot, termites, etc.
2. Functional obsolescence, resulting from:
 - a. Poor architectural design and style;
 - b. Lack of modern facilities;
 - c. Out-of-date equipment;
 - d. Capacity (in relation to site).
3. Economic and social obsolescence, resulting from:
 - a. Misplacement of improvement;
 - b. Zoning and/or legislative restrictions;
 - c. Detrimental influence of supply and demand;
 - d. Change of locational demand.

The first two groups are considered to be inherent within the property itself. The third group of depreciating influences consists of economic and social factors which are extraneous to the property itself.

Depreciation is deducted from the current new replacement or reproduction cost of the building involved to arrive at the current value of improvements. The resulting figure is then added to the appraised value of the land to obtain the total appraised value of the property. Accrued depreciation may be classified either as curable or incurable. The latter classification includes those instances that would require complete replacement or excessive repair costs and thus be too costly to remove and replace, or to repair.

Three methods may be used to estimate "accrued depreciation."

The first is the observed-condition method. Under this method the accrued depreciation is usually determined by establishing the total cost of making all repairs to correct curable physical deterioration and functional obsolescence, plus the estimated loss in value due to incurable physical deterioration and functional and economic obsolescence.

The observed-condition method is the most widely used in actual practice.

The second method is known as the age-life method. This is based on depreciation tables which have been developed to reflect age-life experience in the depreciation of structures of various types and uses, assuming average care and maintenance. Some depreciation tables, such as those published by the U. S. Treasury Department, Bureau of Internal Revenue, under the title "Income Tax Depreciation and Obsolescence Estimated Useful Lives and Depreciation Rates," reflect not only normal physical deterioration but also all economic and functional obsolescence as well.

The third method is a technical one used by appraisers as a by-product of the capitalization approach to value. It is known as the building-residual technique. Under this method the land is valued independently of the building and the fair annual net return on the land is deducted from the estimated net annual income of the property (land and building). The residual amount is said to be attributable to the depreciated building and is capitalized to indicate the building value. The depreciation figure is the difference between the residual value of the building as shown above and that of a new structure of similar type. It provides a good check on the cost approach appraisal.

Accrual for depreciation

Future depreciation or recapture is the loss in value which has not yet occurred but will come in the future and is of significance in the capitalization of income method. In the income approach to valuation, it is based on the remaining economic or useful life during which time provision is made for the recapture of the value of improvements. It is the return "of" the investment—as differentiated from the return (interest and profits) "on" the invested capital. Under the income approach this depreciation may be measured by one of two different methods. These are:

Straight-line depreciation, a definite sum deducted from the income each year during the total estimated economic life of the building to replace the capital investment.

Sinking-fund method, which also includes a fixed annual depreciation deduction from income, but with yearly reserves set up from such funds which at compounding interest will offset the depreciation. Accruals for future depreciation to replace the capital investment are in addition to and essentially different from both maintenance charges and reserves for periodic replacement of curable depreciation. Should there be any estimated salvage value to the property at the end of its economic life, this amount need not be returned through the annual depreciation charge under either the straight-line or the sinking-fund method.

Recapture usually is recognized as a proper charge against income. It is an authorized expense for investment property or property used in trade or business, where the property is subject to fair wear and tear. Under income tax regulations depreciation is not an authorized expense for residential property unless such property is used for rental income. The rate of depreciation, for income tax purposes, may be determined by several different methods.

Book depreciation

It should be understood that differences exist between "book" depreciation as computed by an accountant and estimated loss in value as determined by a professional appraisal. The former is a theoretical figure adopted for accounting purposes.

The latter is based on observed conditions and engineering and economic analysis as of the date of appraisal.

In accruals for future depreciation where both estimates are based on theory, since the accountant and the appraiser select rates of depreciation for different purposes, they may vary considerably. While both estimators may use the same period as to the remaining economic life of the property and may also use the same method, additional considerations may affect the resultant rate. Whereas the accountant may be restricted because of accounting conventions, the appraiser is under no such restrictions. The real estate agent who is estimating values should understand the necessity for following proper appraisal procedures and should not rely on book values either to estimate accrued depreciation or for future depreciation accruals.

Contrasting with depreciation is *appreciation* of values which result from inflation or from special supply and demand forces relating to the specific property. Appreciation may reduce or offset entirely a normal anticipated decrease of value due to depreciation.

In concluding this chapter on concepts, valuation and appraisal techniques, let us wave three warning flags. It is to be noted that there is no real difference between the words *valuation* and *appraising*. The first is broader, tends to be economic in origin and emphasizes theory; whereas the latter refers more to practice, methods and techniques. Next, anybody can make an appraisal, even a layman, but the *worth* of an appraisal report is determined by the experience, compensation, qualifications, and motives of the person behind it. And, finally, let us not be deceived by any broad statement that appraising is an exact science. It is a science as are any of the other social sciences, but people and property cannot be appraised with the exactness and accuracy reached by the mathematical and physical sciences.

Questions on Appraisals

1. Q. What is an appraisal?
A. An expression of opinion of the value of a property as of a given date and under certain limiting conditions. It is an estimate of the present worth of future benefits.
2. Q. Explain why cost differs from price and value.
A. Cost is the amount of expenditure necessary for, or incurred in, the creation of a thing whereas price is the amount it sold for. Value is (1) the power to command other commodities in exchange or (2) the present worth of future benefits arising from ownership.
3. Q. Distinguish between value and market value.
A. Value is (1) the present worth of future benefits arising from ownership or (2) the power to command other commodities in exchange. Market value is "the highest price estimated in terms of money which the property will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with full knowledge of all the uses and purposes to which it is adapted and for which it is capable of being used."
4. Q. In analyzing a parcel of land to estimate its value, what is the first thing necessary to determine?
A. Highest and best use.
5. Q. Is there a definite relationship between an improper development and depreciation?
A. Yes. If it is an improper improvement, it is functionally or economically deficient and does not produce the highest return of which the land is capable.
6. Q. Enumerate three generally accepted approaches to a real estate value estimate.
A. 1. Comparable sales or market data approach.
2. Cost appraisal.
3. Capitalization or income approach.
7. Q. What two kinds of value may property have?
A. Property may have a use value or value in exchange.
8. Q. Explain the difference between real property and real estate.
A. Real estate is the land and those things which are permanently fastened to it. Real property is all the rights and benefits to be derived from the ownership of real estate.
9. Q. What are the "amenities" as the term applies to real estate?
A. Amenities are the satisfactions of enjoyable living to be derived from a home or profits from income property.
10. Q. What are the rights which are represented by the ownership of real estate?
A. (a) Right to sell.
(b) Right to lease.
(c) Right to enter.
(d) Right to give it away.
(e) Right to refuse to exercise any of these rights.
11. Q. Why is appraising more a study of people's activities than an exact science?
A. It is the people's actions in the market which determine the price at which property may be sold. Therefore, an appraiser must evaluate the thinking as well as the actions of people. If people think that real estate is worth a certain amount, that

will be its selling price.

12. Q. Explain "highest and best use" as it applies to real estate.
A. The use which will produce the greatest net income over a given period of time is the highest and best use.
13. Q. How is the idea of highest and best use applied in appraising?
A. In evaluating property it is necessary to determine its highest and best use because this is the starting point for the appraisal.
14. Q. If a property cannot be sold in the current market, does it have no value?
A. It would not have any exchange value at that time, but its use value would not be affected by current market conditions. It is just as capable of producing the amenities of living as ever.
15. Q. Why does usefulness plus scarcity create maximum value?
A. People desire those things which are useful to them. However, if the things desired were available to all in unlimited quantity, they would have no value for they could be had for the taking. Only when the useful items become scarce are people willing to give other things in exchange for them. The more scarce they become, the higher the price is bid up.
16. Q. In what ways have governmental agencies affected the value of real estate?
A. The government through the F.H.A. and G.I. loan programs has determined to a certain extent where and what type of buildings should be built. By their rules under which buyers were qualified for loans, they have also affected the price of real estate.
17. Q. How have the F.H.A. and G.I. loan programs affected appraisal procedure?
A. The rules and regulations issued by these government organizations have tended to standardize the appraisal approach of lenders. These agencies have attempted to standardize not only procedure but also terminology and minimum construction practices.
18. Q. What is the definition of value used by the Federal Housing Administration?
A. The price which typical buyers would be warranted in paying for the property for long-term use or investment, if they were well-informed and acted voluntarily and without necessity.
19. Q. How does the definition of value used by the Veterans Administration differ from that used by the F.H.A.?
A. The Federal Housing Administration's definition stresses that it is what a buyer is warranted in paying, while the Veterans Administration states that it is a price that a qualified appraiser would recommend to a purchaser as being a proper price under prevailing conditions.
20. Q. How does the American Institute of Real Estate Appraisers define market value?
A. "The highest price estimated in terms of money which a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used."¹
21. Q. Name three kinds of depreciation which might affect the value of a property.
A. (a) Physical deterioration—wear and tear or action of weather.
(b) Functional obsolescence—such as a poor floor plan or inadequate space.
(c) Economic depreciation—run-down neighborhood, poor police protection, and other forces outside of the property itself.
22. Q. Under what conditions and to what kind of property would each approach be given the most consideration?
A. 1. Comparison in midlife residential properties.
2. Reproduction cost in public properties.
3. Capitalization in investment properties.
23. Q. What are some of the indicators of the activity of the real estate market?
A. (a) Mortgage foreclosures.

¹ May, Arthur A.

- (b) Number of deeds recorded.
24. Q. Is it necessary to know the reason for an appraisal ?
A. Yes. In order to stress certain types of information necessary in forming an opinion. For example, in assessment cases, comparison with other assessments; in sale or purchase, comparison with sales as of certain periods of time.
25. Q. Name at least five reasons for which appraisals of single family homes are made.
A. 1. Sale. 4. Taxation. 7. Partition.
2. Purchases. 5. Inheritance tax. 8. Insurance.
3. Mortgages. 6. Condemnation. 9. Liquidation.
26. Q. List the following in the order of importance in residential analysis: age of building; suitability of residence to site; physical condition of building.
A. 1. Suitability of residence to site.
2. Physical condition of building.
3. Age of building.
27. Q. Name four types of city data to be assembled.
A. 1. Economic background and trends.
2. Population trends.
3. Cultural facilities.
4. Transportation pattern.
28. Q. Name four types of neighborhood data to be assembled.
A. 1. Physical or structural.
2. Shopping facilities.
3. Transportation facilities.
4. Nuisances or economic influences.
29. Q. Does the trend in the wholesale price of textiles in New York City have any bearing upon local real estate?
A. Yes. It is an indication of the economic conditions prevailing as compared with other economic periods. Real estate follows the general pattern of all commodity markets.
30. Q. Is an appraisal (a) absolute value? (b) a guess? (c) an estimate?
A. (c) An estimate of the public's opinion of the value.
31. Q. What qualities in an appraiser will convert a guess into an estimate?
A. Training in fundamentals of land economics, knowledge of real estate in general, experience in operating and managing real estate, personal integrity.
32. Q. What is a summation appraisal ?
A. The addition of the estimated land value to the depreciated reproduction cost of the improvements.
33. Q. Do three approaches to value indicate more than one value?
A. No. Three approaches to value merely limit the range within which the value will be and give credence to the judgment of the appraiser.
34. Q. Under what conditions may a house be worth less than its cost ?
A. When it is an over-improvement.
35. Q. (a) What is an over-improvement ?
(b) What is an under-improvement ?
A. (a) That improvement which does not produce an adequate return for the amount invested in a building.
(b) That improvement which does not sufficiently improve the land to produce the highest return of which the land is capable.
36. Q. What charges would you make against gross income from a rented property?
A. Allowance for vacancies and rent losses, fixed expenses (taxes and insurance), operating expenses (management, utilities, maintenance, repairs) and reserves for replacements.
37. Q. Would the capitalization rate be high or low for the following properties?
(a) Business property in 100% suburban location.
(b) Apartment building in a blighted area.

- (c) A new single-family residence in an old neighborhood.
- A. (a) Low. (b) High. (c) High.
38. Q. What is meant by "unearned increment"?
- A. Value added to land by increased population and demand for which owner is in no way responsible.
39. Q. What additional factor should be considered in the valuation of a business other than those of goods and fixtures?
- A. Good will of the business if the market indicates a willingness to pay for it.
40. Q. What is the difference between assessed valuation and market value?
- A. Assessed valuation is the valuation fixed for purposes of taxation; market value is the amount for which the property may be sold in the open market.
41. Q. (a) What is functional obsolescence?
- (b) What is economic obsolescence?
- (c) How does physical deterioration manifest itself?
- A. (a) Inadequate or improper design or outmoded equipment.
- (b) Influences external to the property which affect its income or desirability because of their undesirability, or nuisances.
- (c) In deteriorated appearance, fungus growth, insects, worn members.
42. Q. What effect does purchasing power of the population in a district have upon real estate values?
- A. It limits the value to the ability to pay.
43. Q. How do you estimate the cubical contents of a building?
- A. By measuring the building and multiplying the width by the depth by the height of the various sections of the structure.
44. Q. What is straight-line depreciation?
- A. A fixed amount deducted annually from the income indefinitely.
45. Q. What is meant by the economic life of a building?
- A. The period of time during which it will earn an adequate income to justify its existence.
46. Q. Outline the principal steps in the appraisal process.
- A. 1. Definition of the problem.
2. Preliminary survey.
3. Data program.
4. Data Classification and analysis in:
- a. Cost approach.
- b. Market data (comparison) approach.
- c. Income approach.
5. Correlation.
6. Final estimate of value.
47. Q. Name several important value factors to be considered in appraising a city residence.
- A. The purchasing power of the neighborhood population, availability of transportation, educational and cultural facilities, the physical characteristics of the house, and the ratio of land to building value.
48. Q. Name several important value factors to be considered in appraising an improved farm.
- A. Distributional facilities for the produce of the farm, the probable productivity of the soil, climatic conditions, adequacy of the buildings, physical characteristics of the building, and water supply.
49. Q. Briefly explain the three residual methods of capitalizing income into value.
- A. 1. *Land residual process.* Capitalize the amount remaining from the income after a proper allowance has been made for the earnings of the building. Process to be used when a building is new and its cost is known.
2. *Building residual process.* Capitalize the amount remaining from the income after a proper allowance has been made for the earnings of the land. Process to be

- used when a building is old and the cost or value of the land can be closely estimated.
3. *Property residual process.* Capitalize the entire net income by means of an overall rate.
50. Q. What characteristics of property should be compared in interpreting market price data?
- A. 1. Size of structure, construction, replacement cost, special features and deficiencies.
2. Rental value, gross and net income.
3. Site and other improvements.
4. Age, condition, obsolescence, functional utility.
5. Neighborhood (location).
6. Real estate market trends.
51. Q. In appraising for market value are you concerned with mortgages upon the property?
- A. Not ordinarily. The usual procedure is to appraise as if free of encumbrances. However, methods involving appraising of the return to equity are becoming more popular.
52. Q. Why may a business be worth more than the value of the fixtures and merchandise?
- A. The location and clientele may be already established—"good will."
53. Q. In computing the net income from a furnished apartment house, there are several major cost items to be deducted from the gross income to arrive at the net income. Name eight such distinct items.
- A. (1) Taxes.
(2) Insurance.
(3) Repairs.
(4) Depreciation on furniture.
(5) Utilities.
(6) Vacancies and collection losses.
(7) Management.
(8) Reserve for replacements.
54. Q. Will economic changes affect market price and market value to the same extent?
- A. No. Some changes will affect both while other changes will affect one more than the other.
55. Q. What would be an all-inclusive definition of accrued depreciation as it applies to real estate?
- A. Loss of value, due to all causes, from reproduction cost new.
56. Q. What is the difference between accrued depreciation and deferred maintenance?
- A. Accrued depreciation is the amount of depreciation of all kinds which has accrued to a building. Deferred maintenance is that part of physical deterioration which can be restored by repairs and maintenance.
57. Q. Why is location so important in the evaluation of real property?
- A. Location is important because the area near a property tends to fix the amount which can be obtained for the property. The surroundings are the source of so-called economic obsolescence which destroys more value than any other cause.
58. Q. What are some of the things to look for in appraising a location?
- A. Who lives there? What is their income? What are their interests? What per cent of the area is built up? How old are the houses? What are the restrictions and zoning? Are there non-harmonious groups in the area? Do the houses conform structurally and architecturally? This is only a partial list.
59. Q. Why should an appraiser use more than one of the three accepted approaches in evaluating a property?
- A. More than one approach should be used to check the results obtained from the other approaches. A person should use as many of the approaches as will apply to

the property under appraisal.

60. Q. On what type of property would the cost approach tend to be most accurate?
A. (1) On newly improved property in a good neighborhood and in an active real estate market.
(2) On public or special properties.
61. Q. On what kind of property would the income approach be most widely used?
A. On commercial and investment property rentable to tenants.
62. Q. Under what circumstances would an appraiser use the market approach?
A. The market approach should be used in all cases where it is possible to find comparable sales.
63. Q. What is a capitalization rate?
A. A capitalization rate is the percentage figure used to evaluate a net income flow and to convert it into a capital amount. It reflects the return that investors demand for their investments. At any specific time it can be found in the market by dividing the average net income of a property by the price at which the property was sold. By computing this percentage for comparable sales a valid capitalization rate can be obtained.
64. Q. When can it be said that sales of other properties are comparable to a subject property?
A. Other properties are comparable if they have similar sizes, ages, neighborhood influences, architecture, floor plans, sized lots, are capable of producing the same volume of benefits and have the same highest and best use and zoning.
65. Q. What type of sales should be excluded as comparable in appraising?
A. Several types of sales should be excluded. The following is not a complete list:
(a) where grantee is any governmental agency or a public utility.
(b) where grantee acquired title through foreclosure.
(c) where grantee is a charitable, religious or educational organization.
(d) where grantee and grantor are relatives or corporation affiliates.
(e) where property is a subject of an undivided interest.
(f) where sale was not the result of an arm's length transaction under normal circumstances.
66. Q. How is the land evaluated when using the cost approach?
A. It is usually evaluated by using the market approach on comparable sales.
67. Q. What is the difference between reproduction and replacement costs?
A. Reproduction cost means the cost of reproducing a building exactly as it was built with the same or similar materials at present costs for labor and materials. Replacement cost means the cost of constructing a building which would serve the same purpose as the subject property.
68. Q. Give three methods used in estimating the cost of buildings.
A. a. The quantity-survey method.
b. The unit-in-place method.
c. The comparative (square foot or cubic foot) method.
69. Q. Why is it sometimes difficult to determine the net income of rental properties?
A. Because of inadequate bookkeeping on the part of the owner and because of the lack of maintenance.
70. Q. To what extent is the judgment of the appraiser involved in an appraisal?
A. Good judgment is an all-important factor in a good appraisal. Only by weighing the data gathered in the scale of good judgment can a satisfactory appraisal be made.
71. Q. Do houses ever sell above their cost?
A. Yes. When housing is short, homes may sell well above their reproduction cost.
72. Q. In what way does the income of the people in a neighborhood affect the value of real estate?
A. The income of people in the area limits the price of property because people seldom spend more than 30% of their income for housing.

73. Q. Could most sales of property be used as comparables in using the market approach?
- A. No. Many sales must be excluded because the sales used must meet the requirements of informed persons who are not under outside pressures. Sales to government agencies or as a result of condemnation under eminent domain should also be excluded.
74. Q. What is the difference between market price and market value?
- A. Market value is what a prudent, informed buyer free from outside pressures is justified in paying for a piece of property for long-term use or investment, while market price is what he would have to pay under current market conditions or actually did pay for it.
75. Q. Does the fact that three approaches are used to determine the appraisal value mean that there are three values?
- A. No. The three approaches are used to develop a reasonable range of values. They are tools to be used in gathering information upon which the final estimate is based.
76. Q. Could it be said that inflation might make it unnecessary to consider depreciation in appraising a property?
- A. No. Depreciation actually occurs, so it must be considered even though it has been hidden by the increase in value due to inflation.
77. Q. How is the real estate market unlike other markets?
- A. There is no open market where buyers and sellers may gather. The market is made by real estate buyers and sellers. The chances of contracting more than a small per cent of all prospective buyers is very remote.
78. Q. Select three terms from the following which pertain to the appraisal of real estate.
- | | |
|----------------|-------------|
| covenant | comparison |
| capitalization | default |
| encroachment | foreclosure |
| consideration | option |
| eviction | summation |
- A. (1) capitalization. (2) comparison. (3) summation.
79. Q. In relation to real property, state the difference between "assessed valuation" and "assessment."
- A. "Assessed valuation" is the amount for which real property is evaluated by a unit of government for taxation purposes. "Assessment" is a prorata charge or tax levied against a property for a special improvement such as a sewer, pavement, or street. Also, it may mean the actual tax to be paid on real property arrived at by multiplying the assessed valuation of the property by the assessment rate (millage) for tax purposes.
80. Q. Explain the principal steps in the cost approach to value.
- A. This approach is comprised of three principal steps. First, compute the cost of reproducing or replacing the improvements with a suitable equivalent; second, make deductions for an estimated depreciation of the value of the improvements; and third, add thereto an estimate value for the land, secured by comparison with other similar land.
81. Q. If a building has a life expectancy new of 50 years and an effective age of 30 years, what is its remaining economic life?
- A. 20 years.
82. Q. What are the three residual techniques?
- A. a. Building.
b. Land.
c. Property.
83. Q. What is meant by "an annuity type income"?
- A. Long-term lease to financially strong tenant.
84. Q. Where a property is under lease, what are the two component parts of the fair

market value of the property (in relation to the owner's and tenant's interests) ?

- A. Leased fee and leasehold.
85. Q. Name the three major categories of depreciation.
- A. a. Physical deterioration.
b. Functional obsolescence.
c. Economic obsolescence.
86. Q. What are the four categories of forces affecting real estate value?
- A. 1. Social.
2. Governmental.
3. Economic.
4. Physical.
87. Q. Identify the formulas for property tax computations.
- A. Tax rate = tax divided by assessed valuation.
Tax = assessed valuation multiplied by tax rate
Assessed valuation = tax divided by tax rate

True and False

(Answers to this section are on pages 709-710.)

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|---|---|---|
| 1. Loss to a building from any cause is called deterioration. | T | F |
| 2. The value of land is more dependent upon its utility than its size. | T | F |
| 3. Market value usually is the true value of real estate. | T | F |
| 4. There are usually three approaches to a value estimate. | T | F |
| 5. "Improved to the highest and best use" means that improvement which will produce the largest amount in money or amenities over a certain period of time. | T | F |
| 6. Purchasing power of the population tends to limit the value of real estate in a neighborhood. | T | F |
| 7. A house is never worth less than its cost. | T | F |
| 8. The economic life of a building is the time during which its income justifies its existence. | T | F |
| 9. Zoning regulations limit the use of real estate. | T | F |
| 10. Market value and market price are synonymous. | T | F |
| 11. An under-improvement is any improvement underground. | T | F |
| 12. Two adjacent lots on a main business street, having the same area and the same topography but one having a frontage of 40 feet and the other a front of 35 feet, have the same value. | T | F |
| 13. All sales prices are conclusive evidence of value. | T | F |
| 14. There are three kinds of depreciation which affect the value of property. | T | F |
| 15. Reproduction cost tends to set the upper limit of value. | T | F |
| 16. Interest is the rental charge of money for its use. | T | F |
| 17. A summation value is the sum of the land value and the building value. | T | F |
| 18. Economic obsolescence is caused by undesirable neighbors. | T | F |
| 19. There is only one type of value for a given property. | T | F |
| 20. Functional obsolescence may be caused by poor planning. | T | F |
| 21. The word appraisal means a process or method by which an opinion of the value of a property is derived. | T | F |
| 22. Depreciation is a loss in value from any cause. | T | F |
| 23. When making an appraisal, the purpose of the appraisal should be known and stated. | T | F |
| 24. In appraising residential property the possible income is given the greatest consideration. | T | F |
| 25. The rate of capitalization of the net income is that rate demanded by the public and which reflects the risk involved as compared with other investments. | T | F |

- | | | |
|--|---|---|
| 26. Straight-line depreciation is a fixed annual sum deducted from the value of a building which will return its cost during its economic life. | T | F |
| 27. Building restrictions and zoning regulations always increase the value of property. | T | F |
| 28. The term "assessed valuation" always means market price. | T | F |
| 29. The term "appraised value" means the present market value. | T | F |
| 30. It could be said that no appraiser has ever recorded all of the pertinent information which affects the value of a piece of property. | T | F |
| 31. The valuation of residential property makes up only about one-half of all appraisals in the United States. | T | F |
| 32. An appraisal for a mortgage loan is usually very close to selling price. | T | F |
| 33. An appraiser is usually asked to find the market value of the property involved. | T | F |
| 34. The risks of investment in real estate lie principally in the factors surrounding the property rather than in the physical property itself. | T | F |
| 35. In the final analysis a mortgage loan valuation is an evaluation of the risks involved. | T | F |
| 36. The valuation for a part of a lot taken by condemnation to widen a street would be close to the market price for that part of the lot. | T | F |
| 37. The term "value" is a mathematical concept. | T | F |
| 38. Economists tend to favor the idea that the value of a material thing is its value in exchange. | T | F |
| 39. Most people who buy homes could be said to be "well informed" as to the uses of the property. | T | F |
| 40. The courts have contributed a great deal to the definition of value. | T | F |
| 41. The typical real estate sale fits quite closely the definition for determining value. | T | F |
| 42. The terms of sale could affect the "value" of a piece of property. | T | F |
| 43. If a piece of property cannot be sold on the existing market then the appraiser would have to say that it has no exchange value at that time. | T | F |
| 44. There is often more demand for expert appraisals during a depression than during a boom period. | T | F |
| 45. It would be correct to say that cost and value are almost always the same. | T | F |
| 46. For the most part it is not very difficult to gather adequate data on the costs of construction or the life span of neighborhoods. | T | F |
| 47. "Judgment" as far as appraising is concerned could be said to be made up largely of the ability to discriminate between the relevant and the irrelevant. | T | F |
| 48. Information concerning the attitude of lending institutions should be gathered by the appraiser. | T | F |
| 49. The general information gathered for appraisal purposes may be used over and over again for different appraisals if it is kept up to date. | T | F |
| 50. Court decisions seldom affect real estate values for they are only enforcing the laws that are already on the statute books. | T | F |
| 51. The population growth around a city has little effect on real estate values within the city itself. | T | F |
| 52. There has been an increased use of the right of eminent domain by governmental bodies in recent years. | T | F |
| 53. Cost will always fix the upper limit of value even in war times when materials are scarce. | T | F |
| 54. Cities are usually built on poor land in order to preserve the good land for agricultural purposes. | T | F |
| 55. The population trend in the United States is probably of more importance to an appraiser than the trend within the city itself. | T | F |
| 56. In the past, population growth within an area was a good indicator of the trend in real estate values. | T | F |
| 57. Those who are interested in real estate have been able to quite easily analyze those factors which cause city growth and determine values. | T | F |

58. A more thorough knowledge of the economics of cities might have prevented many millions of dollars in losses. T F
59. Real estate values in a city that has both commerce and manufacturing as a source of payrolls would be more stable than if only manufacturing were present. T F
60. A city of many small factories would tend to have more stable real estate values than one in which there are just a few very large factories. T F
61. The overflow movement of minority groups from one district to another is usually dictated by economic compulsion rather than a desire by the group to move into a new district. T F
62. If a city is left to follow its natural growth lines, it will follow the path of least resistance. T F
63. Real estate carries a heavier tax load proportionately than other types of wealth. T F
64. In the ordinary city there is a great deal of information available on the changing status of neighborhoods. T F
65. One will find a greater contentment in living if the people of a neighborhood have about the same income, culture, and education. T F
66. Values in a neighborhood will not be affected by rentals as long as the percentage of such rentals is less than 50% of the houses. T F
67. Designs of buildings tend to "wear out" with the passing of time as well as with the physical depreciation of the building. T F
68. A neighborhood could have thousands of houses as long as there was a high degree of conformity of buildings and people. T F
69. A large neighborhood will tend to resist deteriorating influences more than a smaller one. T F
70. Local codes and ordinances have little effect on values for they apply to all buildings in the area. T F
71. School enrollment data is a good source of information in real estate trends. T F
72. The peak point of desirability in a neighborhood is probably reached just before the original owners begin to sell and move out. T F
73. The appraiser need not be concerned with the status of the title of a property because he is not expected to render legal decisions. T F
74. The majority of property which is appraised is held in fee simple by the owners. T F
75. Value is determined by the sum total of the bricks, lumber, mortar, and other materials that go into a building. T F
76. Land economics could be described as a study of the uses that grew out of land when viewed as property. T F
77. Optimum value will be achieved when a property offers the most utility to the greatest possible number of people. T F
78. Only one bathroom in a home of five bedrooms would be classified as functional obsolescence. T F
79. It is presumed that land does not depreciate. T F
80. Urban renewal is a process whereby government funds are used to facilitate private investment in improving city land use. T F
81. As a general rule the quality of materials and labor in a building designed by an architect will be of satisfactory quality. T F
82. In an older house the appraiser will probably have to judge the quality of construction by actual inspection. T F
83. The shape of the lot is not important as long as it is large enough to accommodate the house. T F
84. Economic obsolescence could be computed even if a "good" neighborhood could not be found for comparison purposes. T F
85. Functional obsolescence would be reflected by a decrease in rental value in the market place. T F
86. The cost and value of a property would be synonymous only if a new property were improved to its highest and best use. T F

87. In computing the reproduction cost of an old building one should also include the broker's commission as a cost. T F
88. The cubic foot is often used as the unit in computing reproduction costs. T F
89. Once the reproduction cost of a building has been found, this amount is reduced by straight-line depreciation for the number of years that the facility has been built; the result thus obtained is depreciated reproduction cost of the improvement. T F
90. An appraiser need not inquire into the motives of a buyer or seller of a property which he uses for a bench mark if it seems to be a normal transaction in other ways. T F
91. Listing prices tend to fix the ceiling of value. T F
92. If two houses are in the same block, they can be assumed to be comparable for appraisal purposes. T F
93. If the real estate market were unstable, one would need more current data than if the market were fairly stable. T F
94. In the final analysis the comparative approach is a comparison of prices rather than a comparison of properties. T F
95. In most appraisals a person would need data on more than two bench mark properties. T F
96. The capitalization of income to arrive at value was first used on commercial properties. T F
97. Value could be said to be the present worth of all the rights to future benefits arising from the ownership of the property. T F
98. In appraising single-family houses one can often use a gross income-multiplier instead of capitalizing the net income. T F
99. The rate for capitalization increases as a neighborhood grows older. T F
100. A residential lot with a frontage of 25 feet would be worth one-half as much as one with a 50-foot frontage. T F
101. A safe rule-of-thumb is to allow \$5 for each shrub used in landscaping. T F
102. An appraiser need not be concerned with restrictions on a property he is appraising because most of them are not enforced. T F
103. The appraisal of a residential property involves all of the techniques used in the evaluation of real estate. T F
104. The loan to property value ratio is lower today than twenty years ago. T F
105. There has been no increase in the use of eminent domain by governmental bodies since the war. T F
106. If a building has excessive wear or damage which can be cured, the "cost to cure" would be a deduction in arriving at an estimate of value by the cost method. T F
107. An increase in state income taxes will not materially influence the price of real estate because the moneys received from the tax will be spent within the state. T F
108. In the past the population growth within an area has not been a good indicator of the trend in real estate values. T F
109. Real estate values in a city where most employees are government workers would be less stable than in a manufacturing city. T F
110. Because there is a trend toward a greater variety in the styles and construction of homes, a house which is conservatively designed tends to decrease in value more rapidly than the contemporary homes. T F
111. The appraiser need not concern himself with the balance of the elements in planning as long as they do not seriously restrict the use of the house. T F
112. When using the unit-in-place method, it is assumed that all of the cost of building is included in the unit cost. T F
113. When using unit prices, an appraiser can usually disregard such things as extra corners and extra partitions because their cost is incorporated in the unit price. T F
114. Such items as architect's fees and interest on the loan during the construction

- period would be included in unit costing. T F
115. If records have been kept on a building, the total of accrued depreciation would be the amount recorded in the reserve for depreciation. T F
116. The use of average age-life tables for computing depreciation is probably more accurate in a specific case than in observing the condition of the building. T F
117. The economic obsolescence of homes in America is probably greater than in any other country. T F
118. The courts have tended to uphold recorded depreciation as a base for accrued depreciation rather than observed condition because the former can be more easily proved. T F
119. By "reproduction cost new" we mean the cost of exact duplication in today's market with the same or closely related materials. T F
120. In appraising an old house a person is interested in the original cost in order to find the amount of accrued depreciation. T F
121. The quantity survey method is the same as the unit-in-place method. T F
122. When one is using the unit-in-place method any differences in such things as heating systems are added to or subtracted from the other costs. T F
123. Bench mark buildings for the cubic-foot method should have construction quality and utility similar to those of the property being appraised. T F
124. In arriving at the cubic feet in a house a person would take the inside rather than the outside measurements. T F
125. The reconditioning of a building is really an attempt to overcome the deferred maintenance of the building. T F
126. A home built with a poor floor plan would have loss of value due to functional depreciation as soon as it was built. T F
127. Deferred maintenance tends to accelerate depreciation of a property. T F
128. Functional obsolescence is accelerated by the invention of new equipment. T F
129. Ostensible functional inadequacy may be ignored in an appraisal if the typical buyers would accept it. T F
130. An over-improvement on land would create economic obsolescence. T F
131. If the property under appraisal is under-improved, no reduction in value is necessary because you are appraising the property "as is." T F
132. Economic obsolescence probably causes more loss in value than any of the other forms of depreciation. T F
133. Straight-line depreciation is the process most often used by appraisers in computing the amount of depreciation accrued on a building. T F
134. The taking of depreciation on a building is actually a process of amortizing the investment in the building. T F
135. Economic depreciation will be reflected in the loss of rental value. T F
136. Economic obsolescence does not affect the value of land because land is not subject to depreciation. T F
137. Real estate is assessed every odd year. T F
138. Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value, is a ground for revocation of license. T F
139. Issuing an appraisal report on any real property in which the licensee has an interest unless his interest is clearly stated in the report is a ground for revocation of license. T F
140. Marginal land is that on which the cost of operation approximates the gross income. T F
141. Net income is the principal guide to the appraiser's determination of value on an improved retail business property. T F
142. Single-family dwellings are usually appraised by capitalization. T F
143. The gross money expectancy from any income property is the gross income less the operating expenses. T F
144. In appraising income-producing property, allowance should be made for vacan-

cies even though the property is completely rented.	T	F
145. The value of a residential lot is generally figured on a front foot basis.	T	F
146. Obsolescence and deterioration are the same.	T	F
147. A linear foot and a square foot are the same.	T	F
148. The sales price is never more than the appraised value.	T	F
149. Market value is usually determined by the price a willing seller will take and a willing buyer will pay.	T	F
150. Net income is the prime factor in arriving at a true appraisal of a retail business property.	T	F
151. Depreciation and obsolescence mean the same thing.	T	F
152. Assessed valuation is generally considered to be market value.	T	F
153. Generally speaking, real estate values in a city where most employees are government workers would be less stable than in a manufacturing city.	T	F
154. The proceedings by which a governmental subdivision takes private property for public use is called eminent domain.	T	F
155. The tax on a given piece of property is determined by multiplying the tax rate by the assessed valuations.	T	F
156. Economic life is the period over which a property may be profitably utilized.	T	F
157. The right of the telephone company to erect a line across your property is called a right of encroachment.	T	F
158. The gradual increase in the value of real property is called appreciation.	T	F
159. The general term covering loss from any cause is called disintegration.	T	F
160. A front foot ordinance regulates the minimum distance allowable between street line and the front of new buildings.	T	F
161. A competent appraiser develops the three approaches to value in every appraisal.	T	F
162. An appraisal is merely an opinion of value.	T	F
163. The gross multiplier used in appraising is based upon the market relationship between rental value and the sales price of properties.	T	F
164. The value of land is more dependent upon its utility than its size.	T	F
165. Accrued depreciation is all the depreciation which has taken place up to the time of the appraisal.	T	F
166. The ratio between the gross monthly income and the selling price of a dwelling is known as the gross multiplier.	T	F
167. Replacement cost and reproduction cost are the same for appraisals.	T	F

Multiple Choice

(Answers to this section are on page 710.)

- A "rule of thumb" method for determining the price a wage earner can afford to pay for a home is to multiply his annual income by
 - one and a half.
 - two and a half.
 - four.
 - six.
- No depreciation is allowed for federal tax purposes on
 - a 15-year-old improvement.
 - land.
 - auxiliary warehouses.
 - life tenant's interest as lessor in a lease.
- Net income is determined by deducting all expenses from the
 - net rental.
 - figuring eight percent on assessed value.

- (c) sales price.
- (d) gross income.
- 4. The tax on a given piece of real estate is determined by multiplying the tax rate (millage) by
 - (a) the selling price.
 - (b) appraised value of property.
 - (c) assessed valuation.
 - (d) market value, less depreciation.
- 5. A report setting forth the estimate and conclusion of value is
 - (a) an abstract.
 - (b) a critique.
 - (c) closing statement.
 - (d) an appraisal.
- 6. The period over which a property may be profitably utilized is called its
 - (a) economic life.
 - (b) amortized life.
 - (c) income life.
 - (d) net life.
- 7. Amortization means
 - (a) appreciation.
 - (b) liquidation.
 - (c) depreciation.
 - (d) adolescence.
- 8. Two of the three main types of depreciation are physical deterioration and functional obsolescence. The third is
 - (a) dry rot.
 - (b) economic obsolescence.
 - (c) adverse possession.
 - (d) determination of net income.
- 9. Physical deterioration results from
 - (a) tax liens.
 - (b) overcrowded occupancy.
 - (c) deferred maintenance.
 - (d) poor basement drains.
- 10. The three main approaches to residential appraising are replacement cost approach, the capitalization approach and
 - (a) net income approach.
 - (b) highest and best use determination.
 - (c) market data approach.
 - (d) building-residual technique.
- 11. Marginal real estate is
 - (a) border strip between two lots.
 - (b) yielding farm land.
 - (c) land which barely repays cost of operation.
 - (d) waste land due to erosion, swamps, etc.
- 12. Which of the following creates the greatest value in retail income property?
 - (a) Type of construction.
 - (b) Parking facilities.
 - (c) Pedestrian traffic.
 - (d) Vehicular traffic.
- 13. An appraiser in his work
 - (a) finds value.
 - (b) determines value.
 - (c) computes value.
 - (d) estimates value.

14. Market price is
 - (a) the true market value.
 - (b) best price at public sale.
 - (c) price asked for the property on an open market.
 - (d) the amount, in terms of money, paid for the property.
15. By far the largest volume of work of real estate appraisers is the appraisal of
 - (a) single-family dwellings.
 - (b) multiple-family dwellings.
 - (c) commercial income property.
 - (d) industrial acreage.
16. In computing the square footage of a home, you would use the
 - (a) inside measurements.
 - (b) outside measurements.
 - (c) both the inside and outside measurements.
 - (d) neither the inside nor outside measurements.
17. The lessening in value or estimated worth because of outmoded function is called
 - (a) lessened use.
 - (b) obsolescence.
 - (c) depreciation.
 - (d) wear and tear.
18. Highest and best use is defined as
 - (a) industrial property rezoned for single-family use.
 - (b) that use which will yield the highest return on investment.
 - (c) exclusive residential hilltop or "view" lots.
 - (d) property purchased for owner use and occupancy.
19. Income approach for an appraisal would be most widely used
 - (a) on a newly opened subdivision.
 - (b) on commercial and investment property rented to tenants.
 - (c) on property heavily mortgaged.
 - (d) on property heavily insured.
20. Capitalization would be lowest upon the following property:
 - (a) business property in 100% suburban location.
 - (b) apartment building in a blighted area.
 - (c) a new single-family home in an old neighborhood.
21. Land suitable for citrus growth must be
 - (a) nearly level.
 - (b) free from fog.
 - (c) available to good drainage.
 - (d) relatively free from frost.
22. The selling price of real estate is usually based on its
 - (a) intrinsic value.
 - (b) speculative value.
 - (c) exchange value.
 - (d) market value.
23. Capitalization is a process used to
 - (a) convert income into value.
 - (b) determine cost.
 - (c) establish depreciation.
 - (d) determine potential future value.
24. An allowance in an income tax return for periodic decreases in value of income property, is called
 - (a) obsolescence.
 - (b) depreciation.
 - (c) deterioration.
 - (d) fringe benefit.

25. Gross income and effective gross income, in appraisal terminology, are not the same. In determining *effective* gross income, which one of the following would be deducted?
 - (a) Insurance and taxes.
 - (b) Repairs.
 - (c) Depreciation on appliances and furniture furnished tenants.
 - (d) Vacancy and credit losses.
26. In "directional growth," which center is involved?
 - (a) Manufacturing.
 - (b) Residential.
 - (c) Industrial.
 - (d) Commercial.
27. The selling price of homes is usually determined by
 - (a) a minute inspection.
 - (b) opinion of a builder.
 - (c) comparison with similar properties.
 - (d) cost to construct.
28. In computing the square footage of a home for purposes of an appraisal, you would use
 - (a) the outside measurements.
 - (b) the inside measurements.
 - (c) both inside and outside measurements.
 - (d) none of these.
29. Estimating the value of real property is called
 - (a) assessment.
 - (b) appraising.
 - (c) surveying.
 - (d) tabulating.
30. The jurisdiction of a Planning Commission is to pass on
 - (a) new dwelling houses.
 - (b) new commercial structures.
 - (c) apartment buildings and town houses.
 - (d) new subdivisions.
31. The appraised value of a new structure that represents the highest and best use of the land is likely to be similar to its
 - (a) assessed value.
 - (b) replacement value.
 - (c) cost.
 - (d) none of these.
32. In appraising older structures, consideration must be given to
 - (a) depreciation.
 - (b) rental potential.
 - (c) number of occupants.
 - (d) none of these.
33. Loss of value due to a building being unsuitably located is
 - (a) functional obsolescence.
 - (b) economic obsolescence.
 - (c) economic depreciation.
34. Which one of the following is not one of the main approaches to appraising?
 - (a) Capitalization.
 - (b) Comparison.
 - (c) Survey.
 - (d) Summation.
35. Which of the following is the main type of depreciation?
 - (a) Capitalization obsolescence.
 - (b) Exterior obsolescence.
 - (c) Economic obsolescence.

- (d) Gross obsolescence.
- 36. In order to estimate market value of an improvement, it is important to
 - (a) obtain the amount of income.
 - (b) consider the tax millage.
 - (c) estimate depreciation.
 - (d) ascertain amount of a mortgage commitment.
- 37. A person must own real estate for how long in order to take advantage of the long-term capital gain tax?
 - (a) Six months.
 - (b) One year.
 - (c) Eighteen months.
 - (d) Two years.
- 38. To obtain a gross rent multiplier, the appraiser must obtain from comparable properties
 - (a) the cost and annual income.
 - (b) the monthly rent and selling price.
 - (c) the net income and selling price.
 - (d) the net income and rate of capitalization.
- 39. After the economic life of a multiple unit building has been exhausted, the owner has left, in economic terms,
 - (a) the unearned increment.
 - (b) the assessed value.
 - (c) his profit.
 - (d) the residual value.
- 40. In appraising a property, the summation value is the sum of the
 - (a) land and building values.
 - (b) income depreciation and obsolescence.
 - (c) market and replacement value.
 - (d) assessed and taxable values.
 - (e) none of these.
- 41. Value of property
 - (a) is measured in terms of the usefulness of the property.
 - (b) is identical with price.
 - (c) is equal to its cost upon completion.
 - (d) is determined by an official assessor.
- 42. The average selling price of dwellings in a district can be ascertained by
 - (a) assessed value.
 - (b) estimate of unearned increment.
 - (c) comparative analysis.
 - (d) sidewalk judgment of an experienced broker.
- 43. A single structure designed for two-family occupancy is called
 - (a) a triplex.
 - (b) an apartment house.
 - (c) a residence.
 - (d) a duplex.
 - (e) none of these.
- 44. Two of the three main types of depreciation are physical deterioration and functional obsolescence. The third is
 - (a) dry rot.
 - (b) vandalism.
 - (c) economic obsolescence.
 - (d) determination of net income.
- 45. A common unit, other than the square foot, used to determine value in an urban center is
 - (a) cubage.
 - (b) front foot.

- (c) square yard.
 - (d) the quotient.
46. When making an appraisal of real estate, an appraiser is most commonly concerned with
- (a) the remainder estate.
 - (b) the reversionary estate.
 - (c) market value in fee simple.
 - (d) the amenities.
47. The average real estate appraiser is called upon most often to make an appraisal for purposes of
- (a) taxation.
 - (b) condemnation.
 - (c) insurance.
 - (d) market value.
48. Market price is
- (a) the true market value.
 - (b) best price at public sale.
 - (c) price asked in an open market.
 - (d) the consideration paid for the property.
49. In estimating the replacement cost of real property, an appraiser considers the land value, the replacement cost of the improvements and
- (a) the amenity value.
 - (b) the future income.
 - (c) depreciation.
 - (d) none of these.
50. The market approach to value is the method of appraisal in which the value of property is
- (a) based on factual data related to the income yield of the property.
 - (b) based on sales of comparable properties.
 - (c) based on cost of duplicating the improvements on today's market.
 - (d) determined by capitalizing the annual net income.
 - (e) none of these.
51. The economic life of a multiple living unit structure has been exhausted. The owner then has left, in economic terms,
- (a) the profit.
 - (b) the unearned increment.
 - (c) the residual value.
 - (d) the assessed value.
52. A tenant improves the leased property. Taxes are increased on that account.
- (a) The tenant is liable for the increase in taxes.
 - (b) The lessor and tenant are each liable for one-half.
 - (c) The lessor is liable.
 - (d) Neither is liable for the increase.
 - (e) Depends on lease.
53. Which two of the following should have no influence on an appraiser's compensation?
- (a) The closeness of his value estimate to the owner's honest opinion of the property's value.
 - (b) The length of the report.
 - (c) The complexity of the appraisal.
 - (d) Time required to make the appraisal.
 - (e) The appraiser's knowledge and experience.
54. Metes and bounds are employed in
- (a) staking out the location of a building on a property.
 - (b) delineating the boundaries of a neighborhood.
 - (c) describing the boundaries of a tract of land.

- (d) describing the width and direction of a highway.
- 55. In the final correlation stage of an appraisal, the estimate of value is developed
 - (a) by averaging the three indications of value.
 - (b) by according the greatest weight to the median value indication.
 - (c) by selecting the value indication closest to the value desired by the employer.
 - (d) by relating the value indication to the type of property being appraised and the quantity and quality of the available data.
- 56. Capital losses on owner-occupied single family residences are deductible
 - (a) at any time.
 - (b) within three years.
 - (c) the year they occur.
 - (d) at no time.
- 57. Loss of value due to the property being unsuitably located is known as
 - I. economic obsolescence.
 - II. functional obsolescence.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 58. The function of an appraiser is to
 - I. set value.
 - II. estimate value.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 59. The decrease in value because of outmoded function is known as
 - I. functional obsolescence.
 - II. deterioration.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 60. The income value approach for an appraisal would be most widely used
 - I. on dwelling property in a new subdivision.
 - II. on leased property in a shopping center.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 61. When the economic life of an apartment building has been exhausted, the owner's economic interest is the
 - I. residual value.
 - II. unearned increment.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 62. To obtain a gross rent multiplier, an appraiser must obtain from comparable properties, the
 - I. monthly rent and selling price.
 - II. net income and selling price.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.

- (d) neither I nor II.
- 63. An appraiser, in determining depreciation, will consider
 - I. wear and tear from use.
 - II. lack of modern facilities.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 64. Capitalization is a process to
 - I. determine potential future value.
 - II. convert income into value.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 65. "Value before and value after" taking is associated with
 - (a) eminent domain proceedings.
 - (b) forcible detainer.
 - (c) a referendum.
 - (d) adverse possession.
- 66. An appraiser
 - (a) determines value.
 - (b) computes value.
 - (c) estimates value.
 - (d) fixes market price.
- 67. A M.A.I. is a certified appraiser of the
 - (a) Society of Industrial Realtors.
 - (b) Society of Residential Appraisers.
 - (c) American Institute of Real Estate Appraisers.
 - (d) Independent Fee Appraisers.
- 68. What would you estimate the appraisal of a lot 60 ft. wide by 100 ft. in depth, considering that 60 feet is the average width for most lots in the neighborhood? A number of lots sold for \$60 to \$70 per front foot.
 - (a) \$3,000 to \$4,000.
 - (b) \$3,600 to \$4,200.
 - (c) \$4,500 to \$5,500.
 - (d) \$2,700 to \$3,200.
- 69. In studying a tract of land to estimate its value, what is the first necessary determination?
 - (a) Capitalization of estimated net income.
 - (b) Highest and best use.
 - (c) Comparison with sale of other properties.
 - (d) Reproduction cost, less depreciation.
- 70. The average selling price of homes in a district can best be ascertained by
 - (a) assessed values.
 - (b) an appraisal.
 - (c) comparative analysis.
 - (d) none of these.

LICENSE LAWS

Constitutionality

EVERY STATE in this country, the District of Columbia, the Virgin Islands, Guam, the ten Canadian provinces and the Yukon Territory require a person engaging in the real estate business as a broker or salesperson, to be licensed. In order to obtain the required license, the applicant must be of good repute and pass an examination, and demonstrate competency. The enactment of license laws has been the greatest single factor in elevating the real estate business to a professional level. Courts have held that the real estate business is of such a public nature that it is a fit subject for regulation by the state: *Watson v. Muirlsead*, 57 Pa. 161 (Pa. 1868); *Roman v. Lobe*, 243 N.Y. 51 (1926).

Oregon passed the first valid license law in 1919.

The question was raised early whether there was any need for regulation of the real estate industry.

A broker clearly has a needed and useful function. But the abuses which have been practiced by some members of the real estate group show, too, that the justification of the broker exists only when the service which he renders is efficient, intelligent, and honest. Because his relation to the economic mechanism is so delicate and important, and because the social consequences of incompetent or dishonest action on his part are so grave, communities learn, sooner or later, that they must demand that the broker have certain qualifications of education and character. This need has translated itself into regulation by law.

In every one of the fifty states where regulatory laws are in effect, the technique used to accomplish the regulation is a system of licensing. Under these systems, persons must obtain a license in order to engage lawfully in the real estate brokerage business, and only those applicants who possess certain required qualifications are eligible for licensure. Moreover, the continued privilege to engage in the business is conditioned upon the licensee abiding by certain prescribed standards of conduct in the operation of the business.

Are license laws constitutional ?

Now, the very purpose and function of licensure acts obviously operate to deprive countless individuals of the privilege of engaging in the kind of a vocation which they feel they have a natural and inalienable right to pursue. Because these laws are restrictive of the free right to engage in the brokerage business, they have been challenged time and again in the courts of the various jurisdictions. The attacks on their constitutionality have been on every conceivable front; hardly a legal weapon has been left untried; yet, in the main, these laws have withstood every challenge, and in their broad basic concepts they have been established universally as valid and constitutional.

Qualifications of character and competence

The most important question touching the constitutionality of these license laws is, of course, whether the state has the right to demand at all that only persons with certain qualifications of education, knowledge, or character be permitted to engage in the real estate brokerage business. This kind of regulation, say the opponents of licensing laws, violates the “due process” clause of the Fourteenth Amendment of the Federal Constitution. The “due process” clause provides:

... nor shall any State deprive any person of life, liberty, or property without due process of law; ...



It is argued that under this, the “due process” clause, or under similar provisions of state constitutions, every person is protected in his right to pursue a gainful occupation, and if one chooses to engage in the real estate brokerage business, the state cannot rightfully prohibit him from doing so, regardless of whether he be well- or ill-equipped and regardless of the social consequences of his engaging therein.

True it is that the due process clause does prohibit many forms of purported business regulation by the state. There can be no prohibition of the right to pursue a lawful and useful occupation under the guise of regulation. But where the object of legislation is needed regulation of a business and not the destruction of it, the power to the state to enact the legislation cannot be denied. The due process clause has never been held to render the state powerless to protect her citizens by throwing reasonable safeguards around the exercise of any right an individual possesses. There is a broad reservoir of power which inheres in every sovereign state, to protect the health, safety, and property of her citizens. This is what is known in the law as “police power.” And under this, the “police power,” the courts of the various states have sustained the power of the state to restrict the right of engaging in the real estate brokerage business to those who possess certain educational and character qualifications. Thus, in an early and important case, *Riley v. Chambers*, 185 P.

855 (1919), the argument was made before the Supreme Court of California, that it is an arbitrary invasion of private rights and liberties to prevent a person from engaging in a lawful and innocuous business or occupation because of his moral character or reputation. The Court upheld the statute.

License laws are firmly established. Representative cases throughout the country upholding their validity are:

<i>States</i>	<i>Cases</i>
Arkansas	State v. Hurlock 49 S.W. 2d 611
California	Riley v. Chambers 185 P. 855 Breechen v. Riley 187 Cal. 121
Connecticut	Cyphers v. Allen 142 Conn. 699
Florida	State v. Rose 122 So. 225 Shelton v. Florida Real Estate Commission 121 So. 2d 711
Kentucky	Sims v. Reeves 261 S.W. 2d 812
Louisiana	Zerlin v. Louisiana Real Estate Board 103 So. 528
New Mexico	State v. Spears 75 N.M. 400
New York	Groetzing v. Forest Hills Terrace Corp. 205 N.Y. S. 125 Roman v. Lobe 243 N.Y. 51
North Carolina	State v. Warren 114 S.E. 2d 660
Ohio	Hall v. Geiger-Jones Co. 242 U.S. 539 (Security Dealer)
Pennsylvania	Young v. Dept. of Public Instruction 105 Pa. Super. Ct. 153 Verona v. Schenley Farms Co. 312 Pa. 57
Tennessee	Davis v. Halley 227 S.W. 1021
West Virginia	State v. Jackson 120 W. Va. 521
Wisconsin	Payne v. Volkman 198 N.W. 438

Rules and regulations

Practically every state license law authorizes a Board or Commission to promulgate Rules and Regulations to implement the statutory provisions. These must be reasonable and not a usurpation of legislative authority. In 1933 the Hawaii Real Estate Commission adopted a Rule and Regulation that an applicant for license was required to pass an examination. In the case of *Carlson v. Real Estate Commission of Hawaii*, 38 Haw. 9 (1949), the examination requirement was declared void. The next year the *legislature* amended the law to require an examination.

In the case of *Lee v. Delman*, 66 So. 2d 252 (Fla. 1953), the Florida Commission adopted a Rule and Regulation that a real estate salesperson was required to devote *full* time to the real estate business. The court held the Regulation invalid and expressed a doubt that even the legislature could pass such a requirement.

In the case of *Real Estate Commission v. Roberts*, 271 A 2d 246 (Pa. 1970), the Supreme Court upheld the suspension order of the Pennsylvania Real Estate Commission because the broker had refused to permit a Commission Investigator to inspect the broker's escrow account without a warrant or subpoena. The appellant argued that the Commission violated his constitutional rights against self-incrimination and unreasonable searches and seizures. The court held that the suspension order was proper, citing the "Required Record Doctrine" stated in *Shapiro v. U.S.*, 335 U.S. 1 (1948); namely, that:

The privilege which exists as to private papers cannot be maintained in relation to "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established."

The court cited the United States Supreme Court opinion in the *United States v. Morton Salt Co.*, 338 U.S. 632, viz:

Even if one were to regard the request for information in this case as caused by nothing more than official curiosity, nevertheless law-enforcing agencies have a legitimate right to satisfy themselves that (appellant's) behavior is consistent with the law and the public interest.

Exemptions

The class of cases that most closely touches the equality clause is that involving the validity of exemptions granted by the licensing laws. Every existing real estate brokerage license law contains a provision exempting certain enumerated classes of persons from the operation of the Act. In other words, certain persons who do acts of the kind contemplated by the statute, are, nevertheless, not required to obtain a license in order to lawfully do such acts. This does appear to be patently discriminatory. Yet, analyzed more closely, the typical exemptions found in the statutes are found to have some reasonable basis in fact for their existence. And that is all that the law requires to sustain them.

While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed.¹

FIRST. *Attorneys-at-law.* Attorneys are exempted from the operation of almost all of the license laws now in effect. This exemption was challenged in the case of *Young v. Department of Public Instruction*, 105 Pa. Sup. 153 (1932), but the Court upheld it as a constitutional discrimination.

An attorney-at-law is exempt from the provisions of the license law where he is acting in the performance of his duties as such, e.g., while acting as an attorney for the estate of a decedent. An attorney is exempt from meeting educational requirements for a salesperson's examination: *State v. Bodner*, 99 So. 2d 582 (Fla. 1956).

The case of *Tobin v. Courshon, et al.*, 155 So. 2d 785 (Fla. 1963), raised a very important and practical question "whether or not qualified lawyers who are not licensed to operate as real estate brokers may recover part of a commission paid to a registered broker as compensation for cooperating with him in effecting a sale." In a 3 to 2 majority opinion the Court held that the plaintiff attorney could not recover even in an "isolated" case "when there was no relationship to his 'duties' as an attorney and collect compensation on the theory that because he, as an attorney, was familiar with the law of conveyancing, he could enter the Realtor field on an independent venture."

SECOND. *Trustees selling under a deed of trust.* This exemption appears in almost all of the license laws. The California Court upheld this exemption as valid:

The fourth point is that trustees selling under a deed of trust are excepted, and no exception is made of trustees doing anything else than selling, such as leasing, or renting, or collecting rents. The reply is that trustees, whether selling or doing something else, do not come within the purview of the Act. The express exception of trustees selling under a deed of trust adds nothing, and the Act would be the same if it made no mention of trustees.²

THIRD. *Persons holding power of attorney from owner to consummate transaction.* Legislators have been careful, since the California case of *Riley v. Chambers*, to define expressly that the power of attorney be a power to consummate the trans-

¹ Southern Ry. Co. v. Greene, 216 U. S. 400, 417, 54, L. Ed. 536.

² Riley v. Chambers, 181 P. 589 (Cal.)

action, and not simply a power of attorney, and so stated, the exception is no doubt valid, as the California Court held.

An unusual attack was made against the California Act for bringing within its purview a class of persons who, in the earlier history of license law legislation, were not considered properly to be within the purview of such acts—persons who engaged in a single or isolated act of brokerage without engaging in a course of business. It was contended in an important case, which ultimately reached the United States Supreme Court, that insofar as the statute sought to prohibit one individual from employing another to handle a single transaction of the kind contemplated by the statute, it was unconstitutional as depriving persons of freedom of contract. The Supreme Court of California, in answering this contention, said:

No particular or convincing reason can be urged why the participants in a single negotiation of the sort defined in said Act should not be subjected to the same supervision as those engaging in a series of similar transactions, since at the last analysis every transaction of the kind coming within the purview of the statute is an isolated transaction, whether conducted singly or as a series of transactions carried on in the course of a business or vocation, and since the lawmakers have seen fit to embrace the participants in each single transaction within the purview, requirements, and inhibitions of the act in question, we can see no adequate reason for holding that in so doing they have violated the constitutional right of freedom to contract any more than they would have done by confining the scope of the statute to those carrying on such transactions in the course of a business or vocation.³

In construing the exemption of persons “holding a duly executed power of attorney” under the Louisiana law, the Supreme Court, in the case of *Trentman Co., et al., v. Brown*, 176 La. 854 (1933), held that: “It does not mean that one who is engaged in the business of real estate broker may exempt himself from the operation of the act by taking in each instance a power of attorney from the owner whose property he is seeking to sell. If the act meant this, it would soon be worthless as a piece of legislation”

Alleged discriminations other than exemptions

Discriminations have been charged against provisions of the acts other than the exemption provisions. The California Act was challenged for the reason that a different penalty is prescribed for violation by an individual than that prescribed for violations by corporations. It was also attacked because it prescribes penalties for individual and corporate transgressors, whereas partnerships, as such, were left immune. Both these objections were overruled by the Court.⁴

The California Act was also challenged on the ground that it discriminates against collectors of rent by including them within the provisions of the law, while collectors of other obligations are not included. The Supreme Court held the objection invalid.

The same case held, too, that it was not unreasonable to distinguish between brokers and salespersons, in charging the former different license fees, or in requiring the former to submit certificates of character by two landowners, and the latter, certificates by their employers only.

In *Maury v. State*, 93 So. 802 (1922), a statute was considered which imposed a license tax upon “each person, firm, or corporation engaged in buying, selling, or renting real estate on commission,” with a provision that if such person, etc., “also

³ *Haas v. Greenwald*, 196 Cal. 236, 237 P. 38 (1925), affirmed, without opinion, on the basis of *Bratton v. Chandler*, *supra*, in United States Supreme Court: 72 L. Ed. 415.

⁴ *People v. Schomig* 239 P. 413 (1925). Decided by District Court of Appeal. Hearing denied by Supreme Court.

engages in the business of loaning money as an incident merely to the real estate business, they shall also pay an additional license fee of fifty dollars." A majority of the Court upheld the law.

Discriminations against non-residents

The application of provisions of the license laws to out-of-state brokers brings into play still another important provision of the United States Constitution—the comity clause. Article IV, section 2 of the Constitution provides:

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

The principal object of this clause of the Constitution was that stated in its original form in the Articles of Confederation—

the better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union.⁵

It secures to the citizens of every state all the rights and advantages in every other state that pertain to citizenship, in such state. What these rights and advantages are cannot be found in the Constitution, for they are not enumerated. It is for the Courts to say what they are. One such very important privilege is the right to engage in business in the state. Thus, no state could say that the citizens of all other states, save her own, were ineligible for licensure to engage in the real estate brokerage business. The State of Florida attempted to do this very thing in its 1927 Act. But the Supreme Court of the state held the provision invalid insofar as it applied to natural persons. The Court, in *State v. Rose*, 122 So. 225 (1929), said:

That clause [requiring every applicant to be a resident of the State of Florida] is violative of Article IV, section 2, and Fourteenth Amendment, Constitution of the United States, and section 1, Declaration of Rights, Florida Constitution, insofar as it applies to natural citizens. It denies to citizens of each State all the privileges and immunities of citizenship of this State.

In *Land Co. v. Fetty*, 15 Fed. (2d) 942 (1926), it was held that a Georgia lumberman employed for a single transaction of finding a purchaser for a tract of standing timber in Florida, but not licensed there, was not a broker within the statute defining a real estate broker. (Florida Laws, 1923, Chap. 9177.) The Court, stating that the Act was highly penal, construed the provision making one transaction the doing of business within the phrase "as a whole or partial vocation," as meaning that the Act was intended to apply to persons holding themselves out to the public as real estate brokers, and not to require every person specially employed for a specific transaction to take out a license.⁶ In *Aronson v. Carobine*, 222 N.Y.S. 721 (1927), it was held that where a real estate broker licensed in New York is engaged in New York to sell property located in New Jersey and the broker finds a purchaser in New York, the broker is entitled to his commission, although he has not complied with the New Jersey law requiring broker to be licensed. *Lex loci contractus* (law of the place of the contract) will govern. To the same effect is *Tillman v. Gibson*, 44 Ga. App. 440, 161 S. E. 630 (1931).

In *Moore v. Burdine*, 174 So. 279 (1937), (La.), a broker conducted business in Louisiana for the sale of Mississippi Gulf Coast properties to prospects in Louisiana. Although the contract of employment was executed in Mississippi, it was held that the contract was to be performed in Louisiana; that the law of the place of *performance* determined whether contract could be legally executed. Since the plaintiff

⁵ Articles of Confederation, fourth article.

⁶ 86 A. L. R. 640.

broker had not taken out a license in Louisiana, the contract was illegal and the courts of Louisiana would not enforce it.

This rule, said the Court, is a well-recognized exception to the general rule that *lex loci contractus* governs.

In the case of *Talbot v. Jones*, 288 So. 2d (La. 1974), the court held that an unlicensed broker cannot recover a fee for his services in arranging for financing through a vendor's lien and mortgage to enable the defendants to purchase certain real estate, even though it was a single or isolated transaction. (Louisiana requires mortgage brokers to be licensed.)

An Illinois broker, licensed in that state, went to New York and there negotiated a contract for the sale of land in Illinois. The plaintiff broker sued for commission in Illinois. The defendant contended that the brokerage contract was illegal because the plaintiff was not a licensed broker in New York. The New York statute forbids a person, partnership, or corporation from holding itself out or temporarily acting as real estate broker or salesperson without first procuring a license; the state forbids such person to sue for services rendered without alleging and proving he had a license; it makes violation a misdemeanor and one act constitutes a violation. The Court held that the contract was void under New York law where it was made and therefore it will not be enforced by the courts of Illinois. The rule is well settled that validity, construction, and obligation of a contract must be determined by the law of the place where it is made or is to be performed, but the remedy is governed by the law of the forum. The rule is that when a statute declares that it shall be unlawful to perform an act, and imposes a penalty for its violation, contracts for such acts are void and incapable of enforcement. The object of the statute is public welfare and protection of vendor and purchaser.⁷

A number of states, where the license requirements are comparable, have entered into reciprocity agreements. Information may be obtained from the Real Estate Commission as to reciprocity by the particular state. (See directory at end of chapter.)

Grounds for disciplinary action

License laws were enacted for the protection of the public and not to eliminate or restrict competition. A broker's license represents his livelihood. Practically all license laws provide that bad faith, untrustworthiness, incompetency, or dishonest dealing, in a real estate transaction, shall constitute grounds for disciplinary action. In the case of *Haller v. Real Estate Commission*, 253 N.W. 2d 280 (Neb. 1977), the real estate firm engaged in a promotional practice whereby a buyer of a home would purport to sell an item of personal property, of insignificant value, and receive a \$1,000 credit towards the purchase price of a home. A loan was obtained towards the purchase price through a federal savings and loan association, based on the sale price. The Real Estate Commission suspended the broker's license for 90 days, finding that a federal statute that makes it unlawful to knowingly make any misrepresentation to a federally related mortgage institution, had been violated. The Court found that the Commission's action was not arbitrary or unreasonable, and that it acted within the scope of its authority.

In the case of *Lee v. Real Estate Commission*, 516 P. 2d 1342 (Okla. 1973), the court, in sustaining a suspension of a broker's license, quoting from *Wilcox v. Reynolds*, 36 P. 2d 488, said:

⁷ Frankel v. Allied Mills, 369 Ill. 578, 17 N. E. (2) 570 (1938).

The law requires perfect good faith on the part of an agent toward his principal, not only in form, but in substance; and, the obligation of an agent to his principal demands the sincerest integrity, good faith and most faithful service.

A license law tribunal, upon *its own initiative*, or upon complaint filed, may, for cause, refuse, suspend or revoke a license: *Flagg v. Layman*, 517 P. 2d 329 (Or. App. 1973). The New York license law provides only four grounds for disciplinary action, while the Ohio law has thirty-four grounds. Most states, including New York and Ohio, contain a "catch-all" clause, such as, "if found guilty of untrustworthiness, dishonesty, or incompetency in a real estate transaction."

Where broker misrepresents his own property

A number of cases have arisen in different jurisdictions where a complaint has been filed with a Real Estate Commission against a real estate broker on the grounds that he has been guilty of misrepresentation or fraud in the sale of property owned by him. The issue raised is whether such conduct of a licensee, acting as a principal, comes within the purview of the license law. There are cases which hold in the negative as well as the affirmative. The weight of authority, and the recent trend, is that a broker's license may be suspended or revoked on that account.

In *McKnight v. Florida Real Estate Commission*, 202 So. 2d 199 (1967), the Commission's jurisdiction was upheld where the charge involved worthless checks, which were not issued as a result of a real estate transaction. Emphasizing that the law requires a licensee to be honest, truthful, trustworthy, of good character, and that he bears a good reputation for fair dealing, the court said:

We think it would be ludicrous to construe the statutes to mean that a broker to be answerable to the Real Estate Commission must commit the unlawful acts when engaged in real estate negotiations but should he commit the same unlawful acts when not engaged in real estate negotiations he would still be of good character and beyond the Commission's jurisdiction.

In the case of *State Real Estate Commission v. Tice*, 190 A. 2d 188 (Pa. 1963), the court stated "we believe that a single standard of honesty and competency should guide a broker's real estate activities whether performing as broker or owner." The revocation of the broker's license for making certain misrepresentations, in connection with F.H.A. financing in the sale of a property by him as owner, was upheld: *Fibus v. Real Estate Commission*, 7 Pa. Com. Ct. 74 (1973); *McKnight v. Florida Real Estate Commission*, 202 So. 2d 420; *Boineau v. South Carolina Real Estate Commission*, 230 S.E. 2d 440 (S.C. 1976).

The most frequent complaints charge a licensee with misrepresentation, fraud or mishandling of deposit money. Most license laws provide that if a licensee is found guilty or pleads guilty to certain specified crimes, his license may be revoked or suspended. These offenses usually are embezzlement, forgery, extortion, obtaining money under false pretense, conspiracy to defraud, a felony, "or any similar offense or offenses." The New Jersey Supreme Court sustained the Commission's five-year revocation of a broker's license, where he pleaded *nolo contendere* (no defense), in Federal Court, to a charge of violation of an F.H.A. regulation. It held that the license law provision "similar offense" embraced the offense charged: *Handelsman v. Real Estate Commission*, 244 A. 2d 131 (N.J. 1968). Where the license law provides that a revocation or suspension of license may be invoked if the licensee is found guilty under the state law of certain named offenses, the Commission may not discipline a licensee by *its* finding such licensee guilty of said named state law crime. Absent a finding of guilt by a *court of competent jurisdiction*, the Court held

that the Commission had no authority to discipline the licensee: *Rifkin v. Florida Real Estate Commission*, 345 So. 2d 349 (Fla. 1977).

Under the provisions of the license law, a Commission can proceed against any licensee for fraudulent or dishonest dealing, under "proper procedural safeguards."

Act committed outside the state

The question whether the jurisdiction of the Commission extends to acts committed outside the state was raised in the case of *Williams v. Florida Real Estate Commission*, 232 So. 2d 239 (1970). The licensee was employed as a broker by a corporation engaged in selling real estate in the Bahama Islands. The complaint alleged improper dealing in the sale of a lot located on Grand Bahama Island. The court said:

We do not believe the Commission exceeded its jurisdiction simply because these checks were not issued as a result of a real estate transaction. *The law specifically requires that a person in order to hold a real estate license must make it appear that he is honest, truthful, trustworthy, of good character, and that he bears a good reputation for fair dealing.*

Worthless checks are the antithesis of good reputation and fair dealings and this misconduct need not be done during the negotiation and/or sale of real estate in order to be punishable.

Fees must relate to commission requirements

A great deal of revenue for the state's general treasury has been generated from real estate license fees. In this connection, it should be noted that the real estate license law was never intended as a revenue measure. The fees charged must be reasonable to the required cost of the administration and enforcement of the license law, for the protection of the public. If excessive, the assessment for license fees will be held void and unenforceable. In the Arkansas case of *Texarkansas v. Hudgins Products Co.*, 164 S.W. 739, the Supreme Court said, inter alia:

We think the reasonableness of an ordinance for the purpose of regulation may be said to be that, if it is such a sum as is so manifestly excessive and out of proportion, which would probably be required to make the ordinance effective, so that it is certain that the city will derive a profit from the ordinance, then, in all such cases, that the purpose of the statute is to raise revenue, and such ordinances are void.

In the case of *William Coltin and Co. v. Manchester Savings Bank*, 197 A. 2d 208 (N.H. 1964), the Supreme Court said:

The touchstone as to whether (the license law) is a revenue measure or a police power regulation is the intent of the legislature . . . The purpose of the legislation was "the protection of the public from unscrupulous brokers and salesmen."

In the 1977 case of *C. Dan Blackshear, et al v. G. W. Hogan, et al*, File No. C-22561 - Civil Action, Fulton County Superior Court, the Georgia Association of Realtors challenged the license fees required under the 1973 Act as excessive, since the greater portion went into the state treasury. The Court found that the fees collected by the Real Estate Commission were regulatory fees assessed under the police powers of the state, and were not intended as a general revenue measure. The Court declared the license fees charged under the 1973 Act "to be unconstitutional and void." As a result, the 1977 legislature enacted a law which provides that "the Georgia Real Estate Commission shall be authorized to establish a reasonable amount for all fees provided for in the Act."

Educational—apprenticeship requirements

In 1945, 47 states required that an applicant for a broker's license first satisfy some educational and/or apprenticeship requirements as a prerequisite to licensure. The trend is to increase the emphasis on education in order to improve competency for the protection of the public, on the road to true professionalism. Professionalism can only be truly obtained when there is acceptance by the public. A college degree, with a major in real estate, may well be the ultimate standard for entrance into the real estate ranks as a broker. The present apprenticeship requirement must be meaningful for a real estate salesperson who desires to become a broker. The broker-employer should be required to provide the necessary tutelage and supervision so that the purpose of the statutory apprenticeship requirement may be fully met.

In concluding the chapter on license laws, it should be repeated that an applicant for license, as well as the real estate practitioner, should be familiar with the provisions of the license law, and the Rules and Regulations which implement it. For study purposes, the licensing statute can be divided into the following segments: (1) activities included in the definitions of a real estate broker or real estate salesperson; (2) exempted classes under the act; (3) requirements for licensure; (4) composition and requirements for a commissioner—by whom appointed, term of office, compensation; (5) various fees paid—examination, original license, renewal of license, transfer of license, duplicate license, branch office; (6) grounds for refusal, suspension or revocation of license; (7) penalties; (8) out-of-state licensees and reciprocity; (9) handling deposit funds.

A licensee should also be cautious, in preparation of a real estate instrument, that he does not engage in the unauthorized practice of law.

The Tennessee statute specifically provides that the unauthorized practice of law shall constitute grounds for disciplinary action by the Commission.

It is important, then, that a broker, as well as a salesperson, should be familiar with the statutory requirements for licensure, as well as the Rules and Regulations adopted pursuant thereto. A violation, innocent or intentional, may endanger his license and thereby prejudice the licensee's livelihood.

License laws

For inquiry concerning license law requirements in the various states and provinces, write to the following:

ALABAMA	Real Estate Commission State Capitol Montgomery 36130
ALASKA	Real Estate Commission Department of Commerce & Economic Development Pouch D Juneau 99811
ALBERTA	Department of Consumer and Corporate Affairs Insurance and Real Estate Branch 9th Floor—Capitol Sq. 10065 Jasper Avenue Edmonton T5J 3B1
ARIZONA	Department of Real Estate

	1645 W. Jefferson Phoenix 85007
ARKANSAS	Real Estate Commission 101 Wallace Building P.O. Box 3173 Little Rock 72203
BRITISH COLUMBIA	Real Estate Council 608-626 W. Pender Street Vancouver V6B 1V9
CALIFORNIA	Department of Real Estate 714 P Street Sacramento 95814
COLORADO	Real Estate Commission 110 State Services Building Denver 80203
CONNECTICUT	Real Estate Commission 90 Washington Street Hartford 06115
DELAWARE	Real Estate Commission Division of Business & Occupational Regulation State House Annex Dover 19901
DISTRICT OF COLUMBIA	Real Estate Commission 614 "H" Street, N.W. Washington 20001
FLORIDA	Real Estate Commission Department of Professional & Occupational Regulation 400 West Robinson Avenue Orlando 32801
GEORGIA	Real Estate Commission 40 Pryor Street, S.W. Atlanta 30303
GUAM	Department of Revenue and Taxation Real Estate Division P.O. Box 2796 Agana 96910
HAWAII	Professional & Vocational Licensing Division Department of Regulatory Agencies Real Estate Commission P.O. Box 3469 Honolulu 96801
IDAHO	Real Estate Commission State Capitol Building Boise 83720
ILLINOIS	Department of Registration and Education Commissioner of Real Estate 55 E. Jackson

	Chicago 60604
INDIANA	Real Estate Commission 1022 State Office Building 100 N. Senate Avenue Indianapolis 46204
IOWA	Real Estate Commission Executive Hills 1223 E. Court Des Moines 50319
KANSAS	Real Estate Commission 3032 Lydia, No. 204 Topeka 66614
KENTUCKY	Real Estate Commission 100 E. Liberty Street—Suite 204 Louisville 40202
LOUISIANA	Real Estate Commission P.O. Box 44517—Capitol Station Baton Rouge 70804
MAINE	Department of Business Regulation Real Estate Commission 4th Floor—State Office Building Augusta 04333
MARYLAND	Real Estate Commission Room 600—One So. Calvert Street Baltimore 21202
MASSACHUSETTS	Department of Civil Service and Registration Board of Registration of Real Estate Brokers & Salesmen 100 Cambridge Street—Room 1525 Boston 02202
MICHIGAN	Department of Licensing and Regulation Real Estate Division 808 Southland P.O. Box 30018 Lansing 48909
MINNESOTA	Department of Commerce Securities Division 500 Metro Square Building St. Paul 55101
MISSISSIPPI	Real Estate Commission Busby Building 754 N. President Street Jackson 39202
MISSOURI	Real Estate Commission 3523 N. Ten Mile Drive P.O. Box 1339 Jefferson City 65101
MONTANA	Board of Real Estate

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	42 1/2 N. Main La Londe Building Helena 59601
NEBRASKA	Real Estate Commission 301 So. Centennial Mall Lincoln 68508
NEVADA	Department of Commerce Real Estate Division Capitol Complex 201 S. Fall Street—Room 129 Carson City 89710
NEW HAMPSHIRE	Real Estate Commission 3 Capitol Street Concord 03301
NEW JERSEY	Real Estate Commission 201 E. State Street Trenton 08625
NEW MEXICO	Real Estate Commission 600 Second, N.W.—Suite 608 Albuquerque 87102
NEW YORK	Department of State Division of Licensing Services 270 Broadway New York 10007
NORTH CAROLINA	Real Estate Licensing Board 115 Hillsborough Street P.O. Box 266 Raleigh 27602
NORTH DAKOTA	Real Estate Commission 410 E. Thayer Avenue Box 727 Bismarck 58505
OHIO	Department of Commerce Division of Real Estate 180 E. Broad Street Columbus 43215
OKLAHOMA	Real Estate Commission 4040 N. Lincoln Blvd. Oklahoma City 73105
ONTARIO	The Real Estate and Business Brokers Act Dept. 555 Yonge Street Toronto M7A 2H6
OREGON	Department of Commerce Real Estate Division 158 12th Street, N.E. Salem 97310
PENNSYLVANIA	Department of State

	Professional & Occupational Affairs State Real Estate Commission P.O. Box 2649 279 Boas Street—Room 300 Harrisburg 17120
QUEBEC	Service Du Courtage Immobilier Du Quebec Ministere Des Consommateurs Cooperatives et Institutions Financieres Place Hauteville, 700 est Boul. St.-Cyrille, 14e etage Quebec, P.Q.
RHODE ISLAND	Department of Business Regulation Real Estate Division 100 N. Main Street Providence 02903
SASKATCHEWAN	Department of the Provincial Secretary No. 308, 1919 Rose Street Regina S4P 3P1
SOUTH CAROLINA	Real Estate Commission 2221 Divine St., Suite 530 Columbia 29205
SOUTH DAKOTA	Real Estate Commission P.O. Box 638 Pierre 57501
TENNESSEE	Real Estate Commission 556 Capitol Hill Building Nashville 37219
TEXAS	Real Estate Commission P.O. Box 12188—Capitol Station Austin 78711
UTAH	Department of Business Regulation Real Estate Division 330 E. 4th South Street Salt Lake City 84111
VERMONT	Real Estate Commission 7 E. State Street Montpelier 05602
VIRGINIA	Department of Professional & Occupational Regulation Real Estate Commission 2 S. 9th Street—2nd Floor P.O. Box 1-X Richmond 23202
VIRGIN ISLANDS	Real Estate Commission P.O. Box 925 Charlotte Amalie St. Thomas 00801
WASHINGTON	Business and Professions Administration

	Real Estate Division P.O. Box 247 Olympia 98504
WEST VIRGINIA	Real Estate Commission 402 State Office Building—No. 3 Charleston 25305
WISCONSIN	Department of Regulation and Licensing Real Estate Examining Board 1400 E. Washington Avenue Madison 53702
WYOMING	Real Estate Commission Supreme Court Building Cheyenne 82002

Questions on License Law

(In these questions the term “salesman” has been generally used in order to avoid the awkward “he or she” and “his or hers” that the term “salesperson” necessitates.)

1. Q. The Real Estate Commission denied a broker's license on grounds that applicant did not have sufficient experience. At a hearing, he introduced letters from two business associates as to his achievements as a salesman of electrical equipment, and about his general selling ability. The Commission again refused to issue a license. Upon appeal to Court, the Commission failed to include the two letters in the record. Did this failure of the Commission mandate issuance of the license?
 - A. No. The Ohio Supreme Court held that the applicant was not adversely affected or prejudiced by the incomplete record: *Lorms v. State Department of Commerce*, etc., 357 N.E. 2d 1067 (1976).
2. Q. A borough ordinance required that a person engaged in soliciting or canvassing required a license and payment of a fee. A real estate broker was prosecuted under the license law. Was the ordinance valid?
 - A. No. A broker licensed by the state would be exempt from the borough ordinance. The legislature, in delegating authority to the Real Estate Commission to license and regulate real estate brokers on a state-wide basis, precludes a municipality from exercising local control, unless there is an enabling act from the state: (*City of Chicago v. Barnett*, 88 N.E. 2d 477 (Ill. 1949).
3. Q. Danton obtained a judgment against Fenton, a licensed real estate broker, in a civil suit arising out of a real estate transaction. The Real Estate Commission instituted an action against Fenton for revocation of license. Was the transcript of evidence, findings and conclusions, in the civil suit, admissible as evidence in the hearing under the license law?
 - A. No. The Court so held in the case of *Dittmeier v. Missouri Real Estate Commission*, 237 S.W. 2d 201 (1951).
4. Q. In re real estate license fees, what is the distinction between an occupational tax and a regulatory fee?
 - A. An occupation tax is a fee paid into the general treasury of the state and used for any state services. A regulatory fee (such as real estate license fee) is one for the administration and enforcement of real estate licensing. It must bear a reasonable relationship to such cost, and, if excessive, will be held invalid: *C. Dan Blackshear et al. v. G. W. Hogan et al.*, File No. C-22561, Civil Action, Fulton County Superior Court, Georgia (1977).
5. Q. For what objectives may license fees be expanded?
 - A. Improving competency of licensees and raising standards of professional conduct, for the better protection of the public.
6. Q. Which of the following states may fine a licensee, if found guilty of violating the disciplinary provisions of the license law? Arizona, California, Florida, Illinois, Kentucky, New Jersey, New York, Pennsylvania.
 - A. Kentucky, New Jersey and New York.
7. Q. In regard to administration and enforcement of the license law, there are basically three types of license law officials. What are they?

- A. 1. A Commissioner, as in Arizona, California, Oregon and South Carolina.
2. A Department, as in Illinois, Michigan and New York.
3. In most states a Board or Commission usually composed of 3, 5 or 7 members.
8. Q. In a Commission administration, there are how many members, by whom appointed, term of office, requirements of office (residence, years of experience), remuneration?
- A. See license law in your state.
9. Q. What are the requirements for a non-resident broker to operate in your state?
- A. See license law in your state.
10. Q. Does the license law require a broker to have an employee licensed who does only stenographic or other clerical work in the broker's office?
- A. No; however, if the employee gives information regarding listed properties or those for rent, the safer practice is to have the employee licensed as a salesperson.
11. Q. Can the widow of a deceased licensed broker operate as a broker under the decedent's license until the expiration of her husband's license?
- A. No; a license is personal to the person to whom issued and does not survive him.
12. Q. Can a person lawfully act as a broker or as a salesman in a single isolated transaction without having a license?
- A. In most states no.
13. Q. What must a broker do with his license when he receives it?
- A. Post it in a conspicuous place in his office (except California).
14. Q. Does a person who merely lists property, but never shows property, come under the provisions of the license law?
- A. Yes.
15. Q. What must a builder do if he wishes to employ salesmen to sell houses built by himself?
- A. He must secure a broker's license. A salesman can be employed only by a *licensed broker*. Or, the salesman would have to qualify for a broker's license.
16. Q. Can a salesman lawfully accept a commission from a purchaser or seller in addition to the compensation paid him by his employing broker, even though his broker approves?
- A. No; he can accept compensation only from his employer-broker.
17. Q. May a licensed real estate salesman work for two licensed real estate brokers at the same time?
- A. No; he can only work for the broker with whom he is registered.
18. Q. Is the term "valuable consideration" as used in the license law definition of a real estate broker limited to a money consideration?
- A. No; a valuable consideration may consist of property, the rendition of services, or anything which has a monetary value.
19. Q. A licensed broker tells his milkman to keep his eyes open in meeting his customers and says, "If you get me any leads that result in a sale, I'll pay you \$50 for each sale I make." Two sales are made. Can the broker pay him \$100?
- A. No; payment of a fee to an unlicensed person is grounds for revocation of license. A person accepting such payment would be subject to criminal prosecution for operating as a broker without a license.
20. Q. What must a broker do with the license of his salesman:
- (a) while in his employ?
(b) upon severance of employment?
- A. (a) Post license in his office (except in California).
(b) Return salesman's license to Real Estate Commission.
21. Q. List four classes of persons who are not required to be licensed to sell real estate.
- A. 1. Owner.
2. Person operating under power of attorney.
3. Attorney-at-law in the performance of duties as such.
4. Executor, receiver or trustee.

22. Q. Name five grounds for suspension or revocation of license.
A. See license law in your state.
23. Q. Name five activities included in the definition of a real estate broker in your state.
A. See license law in your state.
24. Q. Name five requirements for a broker's license in your state.
A. See license law in your state.
25. Q. Enumerate the penalties for operating as a broker in your state without a license.
A. See license law in your state.
26. Q. Enumerate the various fees for licenses in your state.
A. See license law in your state.
27. Q. The Metropolitan Realty Corporation is duly licensed, with Mr. Smith, the secretary, holding the original broker's license, and Mr. Thomas, the treasurer, the additional broker's license. Mr. Price, the president, has not had adequate experience to apply for a broker's license. Can he be issued a salesman's license?
A. No. In most states, an *officer* of a corporation must be licensed as a broker, if he actively engages in the real estate business.
28. Q. In the event that an officer of a real estate brokerage corporation, who is unlicensed to represent it, negotiates a sale of real estate which is listed with the corporation, is the corporation or the officer entitled to the usual commission for making the sale?
A. No. Licensure is a prerequisite to a claim for commission. The officer must be licensed in order to predicate a claim for commission by the corporation he represents. The corporation, being an artificial person, can only operate through its officers and representatives.
29. Q. John Adams, a small town real estate broker, is duly licensed and has built up a substantial brokerage business. He has one licensed salesman in his employ. John dies, survived by his widow, Mary.
1. Can Mary Adams operate the business, as John Adams' widow and sole heir?
2. Can Mary Adams operate the business through the licensed salesman?
A. 1. No. A broker's license is personal and is not transferable.
2. No. A salesman must be employed at all times by a licensed broker.
30. Q. Higgins, a licensed broker in New York, but not in Florida, contacts Wiggins, a Florida licensed broker, and together, they contact Pickens at West Palm Beach, Florida, regarding the purchase of the Sea Breeze Hotel listed with Wiggins for sale. Higgins and Wiggins have agreed to split 50-50 the commission received by Wiggins if Pickens buys. The sale is made and Wiggins pays Higgins one-half of the commission as agreed. Has Wiggins violated the license law?
A. Yes. Higgins is not licensed and since he carried on active negotiations in Florida, he required a Florida license. It was illegal for Wiggins to pay a commission to an unlicensed person.
31. Q. What are the two basic requirements for a real estate license under the law?
A. Competency and trustworthiness.
32. Q. Do real estate appraisers, mortgage brokers, rent collectors require a license in your state?
A. See license law in your state under definition of a real estate broker.
33. Q. Is the doctrine of "caveat emptor" (buyer beware) an adequate defense for the misrepresentation of a broker or salesman to a purchaser in a transaction where the commission is paid by the seller?
A. No. If the statement he made was likely to influence, persuade or induce, his license can be suspended or revoked.
34. Q. Distinguish between the work of the broker and that of a salesman.
A. A broker represents the owner or purchaser. The salesman operates under the supervision and direction of his employing broker.
35. Q. A broker employs a person to go from place to place contacting members of the public, recommending to them the desirability of property on the New Jersey

shore being marketed by the broker and suggesting to them that they see the broker, if interested. The broker pays such an emissary a monthly salary and expenses. Does such person require a license as a real estate salesman?

A. Yes; his activities constitute real estate dealings.

36. Q. In a partnership one member has asked that he be licensed as a broker and the other as a salesman. Can licenses be issued in accordance with these applications?

A. No; in every partnership every active partner must be licensed as a broker.

37. Q. How much time must a broker devote to the real estate business in order to renew his license?

A. There is no provision in any license law to date which requires a broker to devote all or the major part of his time to the real estate business. Once a broker obtains a license, it may be renewed so long as there is no violation of the license law on his part.

38. Q. How many real estate transactions must a salesman complete in order to be eligible for a broker's license?

A. The license law is silent in regard to the actual time and effort that a salesman must devote to the real estate business. (But see Rules and Regulations for your state.)

39. Q. Adams files a complaint against Brown, a real estate broker, alleging serious fraudulent misrepresentations made by Brown to Adams in connection with a real estate transaction. At the hearing scheduled on the complaint, Brown offers to surrender his license voluntarily and requests that the hearing be called off. The Real Estate Commission refuses to accept the surrender of Brown's license and proceeds with the hearing. Brown files an appeal from the Commission's revocation of license. Was Brown within his rights in offering to surrender his license in lieu of a hearing?

A. No. Brown could not waive hearing on the charges. The hearing was proper. The Commission had the duty, as well as the right, to proceed with the hearing upon the complaint, to determine whether the broker was a fit person to hold a real estate license at a later date. There is an important difference between surrender of a license voluntarily and revocation of license for cause.

40. A. During 1977, three separate complaints are filed against Bates, a real estate broker. Each time that a hearing is scheduled, the complainant, upon receiving restitution, withdraws the complaint and refuses to prosecute. In April 1978, Ames files a complaint against Bates claiming substantial misrepresentations in a real estate transaction. A hearing is scheduled. Bates makes restitution, and the complainant fails to appear at the hearing, sending a letter that he is withdrawing the complaint. Can the Real Estate Commission take any action?

A. Yes. The Commission has authority, upon its own motion, to *initiate* a complaint. It could subpoena the complainant and his witnesses to appear at the hearing and testify as to the averments in the sworn complaint.

41. Q. Alden is president and the sole stockholder of a real estate corporation. He employs six real estate salesmen. A number of complaints are filed against the firm on account of misrepresentations made by the salesmen. Each time, Alden denies personal knowledge of the misrepresentations made. Whenever a complaint is filed, the salesman is discharged and his license surrendered for cancellation. The corporation has a reputation as a "high pressure" outfit. Is the corporation subject to any disciplinary action?

A. Yes. License laws generally provide that a broker's license may be suspended or revoked where he is deemed guilty "of a continued or flagrant course of misrepresentation or making of false promises through agents or salesmen." A broker cannot close his eyes to the continued flagrant misrepresentations of his salesmen and escape personal responsibility.

42. Q. Adams listed his residence for rent at \$250 per month with Bates, a broker. The property, of substantial value, is vacant at the time. A stranger calls at the broker's

office and inquires about the property. Bates tells him that he can inspect the property, but he will have to make a deposit of \$10 to insure the return of the key. The supposed prospect goes to the premises and "strips" it of valuable chandeliers, plumbing, and fixtures. He then returns the key to Bates and receives his \$10 deposit. Adams files a complaint against Bates, alleging that the broker was negligent and incompetent. Bates defends on the grounds that it is customary to permit a prospect to inspect premises and to entrust a key to the prospect for that purpose, and that he took the precaution of requiring a money deposit for the return of the key. Is the broker amenable to disciplinary action?

- A. Yes; not only is Bates guilty of gross carelessness, but incompetency as well. Since the prospect was a total stranger to Bates, the broker's fiduciary obligations to his owner required that he protect his client's property by accompanying the prospect to the property.
- 43. Q. May a licensed broker or salesman lawfully offer, give, or pay to a third person who is not a licensed broker or salesman a share of his commission on a deal for services performed by such unlicensed person?
 - A. No; such offer or payment is unlawful under the express provisions of the Act.
- 44. Q. May a real estate salesman be lawfully employed by or accept compensation from any broker other than the broker under whom he is licensed at the time?
 - A. No.
- 45. Q. Where a real estate salesman employed by one broker is assisted in a deal by a real estate salesman employed by another broker, under an arrangement whereby both salesmen are to have a part of the commission, is it lawful for the first salesman to pay directly to the second salesman the latter's share of the commission?
 - A. No; payment to the second salesman must be made through the employing broker.
- 46. Q. Assume that a real estate salesman changes his employer and fails to notify the Commission; what is the effect?
 - A. The failure to notify the Commission automatically cancels the salesman's license.
- 47. Q. What is the effect, upon the licenses of salesmen, of a revocation or suspension of the license of the broker by whom said salesmen are employed?
 - A. Immediate and automatic suspension; however, should any of said salesmen enter the employ of another broker during the same year, a new license could be issued to the salesman upon the surrender of his original license and pocket card.
- 48. Q. What is the real estate broker's duty with reference to the licenses of his salesmen?
 - A. He is required to display the same prominently in his place of business (except in California).
- 49. Q. What is the difference between a "Realtor" and a real estate broker?
 - A. A "Realtor" is a real estate broker who is an active member of a local board having membership in the National Association of Realtors.
- 50. Q. Adams, a real estate broker, sells his real estate business to Brady, a licensed real estate broker, and agrees not to engage in the real estate business within a distance of two miles for a period of five years. Shortly after the sale, Adams opens a real estate office within two blocks from Brady. The latter files a complaint against Adams with the Real Estate Commission, claiming that Adams was guilty of untrustworthiness. May the commission revoke Adams' license?
 - A. Yes; so held in *O'Hare vs. Gilchrist*, 210 N. Y. App. Div. 518.
- 51. Q. A license law statute provides that a broker "shall be guilty of a misdemeanor for having any salesman in his employ who has not secured the required license." The Ideal Realty Corporation, holder of a broker's license and at the same time engaged in the sale of its own property, employs Jones, who does not obtain a license. Is the corporation guilty of a violation of the above statutory provisions?
 - A. Yes, even though corporation is also engaged in selling its own real estate.
- 52. Q. Roberts sued Clark for a real estate commission. He failed to set forth in his statement of claim or to prove that he was a licensed broker. May he recover?
 - A. No; omission is fatal to broker's cause.

53. Q. Ash sells Beale certain property for \$15,000 and says he thinks it will be worth \$25,000 in two years. At the end of two years, Beale can sell the property for only \$12,500. Is Ash guilty of misrepresentation?
- A. No; Ash has expressed an opinion. His statement constitutes mere “puffing” of goods.
54. Q. Stone, a broker, tells Crow, “Buy this property, I have seen the city’s plans for an airport and it includes this property.” Stone has not seen the plans. Crow relies upon Stone’s statement and purchases the tract. The city did not build the airport. Crow files a complaint. Decide.
- A. Stone’s license should be suspended or revoked as he is guilty of fraud. The broker made a misrepresentation of a material fact which induced the contract.
55. Q. What does the license law require as to maintaining a place of business as a broker?
- A. Each broker shall maintain a place of business and display a real estate sign; his license must be conspicuously displayed inside said place of business.
56. Q. Who is a real estate salesman under the license law?
- A. One who is employed by a licensed real estate broker to perform any of the activities included in the definition of a real estate broker.
57. Q. Can a salesman enter the employ of a person who has taken his broker’s examination but not yet received his broker’s license?
- A. No; a salesman must be employed by a *licensed* broker at all times.
58. Q. A property has been listed with a broker for sale at \$6,500. The broker obtains a buyer at \$7,000 and seeks to retain the extra \$500 and collect a commission of \$325, representing five per cent of \$6,500. The owner files a complaint. To what amount is the broker entitled?
- A. \$350, representing five per cent of the consideration price of \$7,000. The broker is duty-bound to obtain as high a price as he possibly can for his principal, the owner.
59. Q. Fike, a salesman, is employed by Jordan, a licensed broker. Thomas, another licensed broker, asks Fike to sell a property listed with him for sale. Fike succeeds. Can he collect from Thomas?
- A. No; a salesman can operate only through the broker by whom he is employed. If Thomas desires to share the commission, payment should be made to Fike’s employer, Jordan.
60. Q. If you desire to use the word “Realtor” in your advertisement, what must you do to obtain that privilege?
- A. Join a local real estate board, which is affiliated with the National Association of Realtors.
61. Q. Discuss the purpose of the real estate license law.
- A. To protect the public from dishonest and incompetent brokers and salesmen; to protect licensed brokers and salesmen from unfair and improper competition.
62. Q. Is it ethical for a broker to sell his own property to a customer? If so, under what conditions?
- A. Yes, providing the broker makes the position clear that he is the owner of the property.
63. Q. State in detail what procedure a salesman or broker must follow as soon as a prospective purchaser signs the preliminary agreement or offer to purchase.
- A. A broker or salesman shall promptly tender written offer to purchase to the seller and upon obtaining a proper acceptance of offer to purchase, shall promptly deliver true executed copy of same, signed by the seller to both purchaser and seller.
64. Q. What is the responsibility of a broker in taking a check or promissory note and receipting for the amount as cash paid?
- A. A check is not cash until it is paid. The broker is obliged to disclose to owner the kind of deposit received. Broker’s license was suspended in a California case where a non-negotiable note had been received as a deposit, the implied representation made to the principal being that the deposit was cash.

65. Q. Does the Real Estate Commission have the power to make rules and regulations?
A. Yes. The Commission may do all things necessary and convenient for carrying into effect the provisions of the Act and may from time to time promulgate necessary rules and regulations not inconsistent with the law.
66. Q. Is a license or pocket card transferable to another person?
A. No. The license shall show the name and address of the licensee to whom it is issued.
67. Q. Does the Real Estate Brokers' License Act permit the issuing of a real estate license to a partnership as such?
A. No. No license shall be issued to a partnership, association, or corporation as such, except in Illinois and Maine. The license names the firm *and* the representative active broker.
68. Q. Does the Commission have authority, on its own motion, to investigate any action of a broker or salesman and call the matter to a hearing?
A. Yes.
69. Q. Can a salesman renew his license before the license of the employing broker is renewed?
A. No.
70. Q. What constitutes misrepresentation?
A. Misstatement of a material fact which induces the contract. It may be innocent or wilful. If wilful, it may constitute fraud.
71. Q. What duty rests upon a buyer in verifying representations made to him by the broker?
A. Representations made that can be verified by a casual inspection, if the opportunity to inspect is available, would not be grounds for holding a broker responsible for misrepresentation.
72. Q. Check the representations which, if found to be untrue, would, in your opinion, constitute grounds for avoiding a contract of sale and for instituting disciplinary action against the broker.
A. (x) 1. The heating plant, plumbing, and electrical wiring are in good condition.
(x) 2. The cellar is dry and in good condition.
(x) 3. Action could be brought to have an adjoining dilapidated house condemned by the municipal authorities.
(x) 4. A sixty-foot frontage could be sold from the lot for \$2,000.
(x) 5. The taxes amount to \$320 a year.
(x) 6. The zoning ordinance permits alteration of the premises into apartment units.
73. Q. The Ajax Realty Co. advertises that it will give a 21-inch television set free to every purchaser of a dwelling through its office. Is this permissible?
A. No. Since the broker is giving something of value to an unlicensed person, it constitutes a violation of the Act.
74. Q. May a real estate salesman's license be issued to a person not employed by a broker?
A. No; a salesman must be employed by a licensed broker.
75. Q. Broker Ash has an exclusive listing on a property at \$13,500. His salesman Bowen persuaded the owner to reduce the price to \$12,500. The property was then sold to Crooks, another salesman of Ash, who then sold it immediately to a buyer, with whom both Bowen and Crooks had been negotiating previously, at a price of \$14,000. Broker Ash received one-half of the commission on the sale price of \$12,500. Salesmen Bowen and Crooks split their profit. Broker Ash was aware of all aspects of the transaction, but refused to share in the proceeds beyond his share of the commission. The seller was unaware of Crooks' connection with the firm. Did the licensees violate the license law?
A. Yes, the broker violated his fiduciary responsibility of loyalty by permitting his salesmen to profit at the expense of his principal. The salesmen were guilty of a

- scheme to make a secret profit, which constitutes downright dishonesty. Vital information was withheld and the owner was induced to take a lower price.
76. Q. What recourse does an applicant have in case the Commission declines arbitrarily to license an applicant?
- A. Institute a mandamus action in court against the Commission.
77. Q. Does the licensing law apply to part-time brokers or salesmen?
- A. Yes.
78. Q. The "Square Inch—Square Deal Co." advertises for persons to sell square-inch tracts of land, owned by the company, on Pike's Peak. The purchaser pays \$1.00 and receives a deed, signed by the President, Chief Running Deer. The persons hired are to receive 50 cents for each sale made. Must the latter persons be licensed?
- A. Yes; even though minute in size, the subject matter of the sale is real estate.
79. Q. In what ways can a broker improve the efficacy of license laws?
- A. 1. By adhering scrupulously to a high standard of ethics.
2. By exercising personal supervision over and training salesmen.
3. By membership in realty organizations, attending real courses, institutes, etc., in order to improve competency.
4. By reporting violations to the State Commission.
80. Q. What legal papers may a licensed broker prepare?
- A. Only those concomitant with and which grow out of his employment—listing contract, agreement of sale, earnest money receipt, leases, simple deeds, where no charge is made. The Texas Law specifically prohibits a licensee from preparing "a deed, note, deed of trust, or will."
81. Q. Is a licensed broker responsible for all illegal acts of his salesmen?
- A. No; unless he has full knowledge of such illegal acts.
82. Q. A broker is convicted of violation of the Federal income tax laws. Would this constitute grounds for revocation of license?
- A. Probably not, unless a real estate transaction was involved.
83. Q. In endorsing the application of a prospective salesman, what statements does the broker make?
- A. Certification that applicant is honest, truthful, of good repute and that he will be employed by said broker.
84. Q. Name two requirements which a broker must meet which are generally not required of a salesman.
- A. Property owner recommenders; educational requirements.
85. Q. Upon hearing held upon a complaint, if the decision is in favor of the licensee, can the complainant appeal to court?
- A. No.
86. Q. Does the Real Estate Commission have jurisdiction in commission disputes between (a) seller and broker (b) broker and salesman?
- A. (a) No.
(b) Most states, no. In New Jersey and Florida, yes.
87. Q. Adams, a broker, negotiates the sale of his home to Baer for \$30,000. Baer requires a mortgage of \$27,000, plus closing costs. In applying for an FHA mortgage, Adams fills out the application form for Baer. Certain misrepresentations are made as to Baer's finances. The loan is granted. Later, upon discovery, the Real Estate Commission initiates a complaint against Adams. Does the Commission have jurisdiction, since Adams was selling his own home?
- A. Yes, the weight of judicial opinion is that the broker is responsible, since his trustworthiness is involved. He cannot use one set of business ethics as a broker and another set of ethics as a principal.
88. Q. The license law is said to be a valid exercise of the police power of the state. Why?
- A. In order to protect the public in its real estate dealings.
89. Q. When and where was the first license law passed?

- A. California, 1917, which was declared unconstitutional. Oregon, Michigan and California passed license laws in 1919, which were held valid.
90. Q. What is the main difference between broker and salesperson examinations?
- A. Broker's examination is more exacting.
91. Q. In how many states are there license laws at the present time?
- A. In all 50 states and the District of Columbia, the Virgin Islands and Guam, as well as in the Canadian provinces of Alberta, British Columbia, Manitoba, Ontario, Quebec, Nova Scotia and Saskatchewan.
92. Q. Is conviction of an F.H.A. provision a "like offense" under the license law as grounds for disciplinary action?
- A. Yes, where law specifies conviction of certain named crimes, "and any like or similar offense, or offenses."
93. Q. Name five services that a Real Estate Commission may render in using license fees.
- A.
1. Employ adequate number of investigators and field representatives.
 2. Sponsor or assist in educational clinics and seminars open to all licensees, without charge.
 3. Print and distribute regular programmed newsletter or educational bulletin for licensees.
 4. Permit license law personnel to attend conferences and clinics upon subjects related to various segments of real estate practice.
 5. Promote greater rapport between license law officials and state and federal real estate regulatory agencies.
94. Q. What do you understand by a Real Estate Recovery Fund?
- A. The Fund provides financial relief for a defrauded buyer, or seller, against a financially irresponsible licensee. 23 states now have a Real Estate Recovery Fund within the framework of the real estate license law.
95. Q. Is it necessary for a real estate licensee to be a citizen of the United States?
- A. Although many states require citizenship as a prerequisite for licensure, the United States Supreme Court held such requirement invalid in the case of *Indiana Real Estate Commission v. Satoskar*, 417 U.S. 938 (1974); *Preager v. Texas Real Estate Commission* (U.S. Dist. Ct. 1976).
96. Q. Does a Real Estate Commission have power to arbitrate and decide disputes over commissions between broker and salesperson?
- A. In most states, the answer is no. However, the Florida license law does give the Commission that power, where the parties voluntarily submit the dispute to the Commission.
97. Q. Is the broker responsible for the misconduct of his salesperson in a real estate transaction?
- A. Yes, generally—if the broker knew or should have known of the act in question; or if it is shown that the broker failed to give the salesperson that training, direction and supervision which the relationship of broker and salesperson required.
98. Q. Parker, a licensed broker, entered a plea of nolo contendere in a United States District Court to three counts of violating the F.H.A. regulations. The State Real Estate Commission revoked his license. Defendant argues that his due process rights have been violated, and that the license did not specify the violation charged as grounds for revocation of license. Was the revocation proper?
- A. Yes. The U.S. District Court is a Court of competent jurisdiction. The acts charged were within the grounds for disciplinary action by the Real Estate Commission.
99. Q. Define "moral turpitude."
- A. Moral turpitude is "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man": *Jennings v. Karpe, as Real Estate Commissioner*, 111 Cal. Rptr. 776 (1974).

True and False

(Answers to this section are on pages 711-712.)

1. The Executive Secretary of the Commission is a member of the Real Estate Commission. T F
2. All fulltime brokers are Realtors. T F
3. In an "open house" showing, the person in charge need not be licensed. T F
4. Violation of a Rule and Regulation of the Commission is ground for reprimand, but not suspension or revocation of license. T F
5. Local realty boards are affiliated with the Real Estate Commission. T F
6. The splitting of commissions under any circumstances is illegal. T F
7. Once a broker licensed in New York actively negotiates a single real estate deal in Florida, he requires a Florida license. T F
8. A salesman and a broker may actively engage in the real estate business as a partnership. T F
9. A salesman who fails his first examination may obtain a probationary license. T F
10. The license law is a police measure. T F
11. A supersedeas stays the effect of a revocation of license ordered by the Commission. T F
12. "Door bell" solicitation of listings is considered unethical practice. T F
13. The Code of Ethics is a part of the Real Estate License Law. T F
14. No refund of the license fee or any part thereof can be made after the license is issued. T F
15. A salesman must renew his own license. T F
16. Reciprocity is not compulsory upon any state in granting a license to a non-resident licensee. T F
17. A person who passes an examination must wait until the expiration of the license year before he receives his license. T F
18. Dual contracts means giving a copy of the agreement to each party to it. T F
19. The Governor is an ex-officio member of the Real Estate Commission. T F
20. Each real estate office must carry the names of its salesmen on the door or window of the office. T F
21. A single separate account only is needed for the deposit of earnest monies. T F
22. A salesman who conceals the existence of termites in selling a home is guilty of fraud. T F
23. In most states, a licensed real estate broker may not lawfully sell business opportunity properties. T F
24. The amount of bond required is determined by the volume of the broker's business in the preceding year. T F
25. The committing of one real estate deal is prima facie evidence of brokerage. T F
26. In Georgia, an applicant for a broker's license must have at least a high school education or equivalent. T F
27. A broker must notify the Commission when he changes his business address. T F
28. It is satisfactory to use a dormitory room as an office so long as the broker's license is displayed there. T F
29. The real estate license law prohibits a salesman from working in real estate more than 48 hours a week. T F
30. A contractor who employs salesmen must be licensed as a broker. T F
31. A broker's license cannot be converted to a salesman's license and vice versa. T F
32. A broker must immediately notify the Commission when he changes his residence address. T F
33. The license law requires every broker to maintain a definite place of business. T F
34. A real estate broker can be disciplined for the misconduct of his salesmen, if he has knowledge. T F

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| 35. A person engaged solely in the rental of real estate must be licensed. | T | F |
| 36. A licensed salesman may go to work for another broker without requesting the Commission for transfer of license. | T | F |
| 37. A broker is required to report cessation of employment of his salesman to the Real Estate Commission. | T | F |
| 38. A broker may not employ another broker in the capacity of salesman. | T | F |
| 39. A broker's license and a salesman's license are identical and mean the same thing. | T | F |
| 40. Obtaining registration as a broker by fraudulent means constitutes a misdemeanor. | T | F |
| 41. The broker must obey all lawful instructions made known to him by his principal. | T | F |
| 42. A broker may not act for anyone whose interests in the transaction are adverse to those of his principal. | T | F |
| 43. A broker need not let it be known that he is actually the owner when dealing with a prospective purchaser. | T | F |
| 44. A person who works as a real estate broker only on Sundays is not required to have registration. | T | F |
| 45. Two brokers registered individually may occupy the same office space and need not have individual signs. | T | F |
| 46. A broker is not permitted under the license law to use unregistered persons merely to show properties. | T | F |
| 47. A salesman is unable to renew his certificate until that of the employing broker is renewed. | T | F |
| 48. A broker's right to collect commission is not impaired on a deal made after the expiration of his certificate and before renewal of same. | T | F |
| 49. If two brokers share office space but conduct their business separately, it would be permissible, under the license law, to use the same letterheads. | T | F |
| 50. The void certificate of an officer or member of a corporation or partnership does not affect the certificate of a corporation or partnership. | T | F |
| 51. The Commission may deny the renewal of a license to a broker who has refused to stop selling by a method which is dishonest or untruthful. | T | F |
| 52. A person who has been convicted of certain felonies may be denied a license even though he presents recommendations from several friends and brokers. | T | F |
| 53. A broker's license may be suspended but not permanently revoked for representing both buyer and seller and receiving commissions from both without their knowledge and consent. | T | F |
| 54. A complaint may be made orally, if made in person to any Commissioner at the Commission offices. | T | F |
| 55. Any licensee is entitled to a hearing before having his license revoked. | T | F |
| 56. A broker who collects rents for clients and co-mingles the money with his own so that he cannot make proper accounting may have his license revoked. | T | F |
| 57. The fee for a branch office license is \$15.00. | T | F |
| 58. A clerk in a real estate office who prepares real estate listings and sales agreements need not be licensed as a salesman. | T | F |
| 59. The Real Estate Commission has jurisdiction over contractors and builders who build and sell their own properties. | T | F |
| 60. All real estate licenses must be renewed in May. | T | F |
| 61. A real estate salesman can be jailed for operating without a real estate license. | T | F |
| 62. A veteran of foreign wars can obtain a salesman's license by oral examination. | T | F |
| 63. A collector of rent must be licensed if paid for that service. | T | F |
| 64. Negotiating leases comes within the licensing act. | T | F |
| 65. A broker must display the licenses of his salesmen in the broker's office. | T | F |
| 66. Brokers employing salesmen are relieved of all responsibility for the acts of the salesmen if the salesmen are bonded. | T | F |
| 67. Realtors are members of the National Association of Realtors. | T | F |

68. A real estate salesman who desires to transfer to another broker merely picks up his license from the first broker and places it upon display in the office of the second broker. T F
69. The Commission may revoke the license of a broker who fails to remit commissions he owes to another broker. T F
70. The Commission may waive the qualification examination for license if the applicant has had several years of real estate experience. T F
71. All real estate licenses expire three full years from date of issue. T F
72. An alien may be licensed as a real estate salesman in Illinois if he has received his first papers. T F
73. A licensed salesman may go to work for another broker immediately upon the filing of an application for transfer. T F
74. The committing of one act prohibited by the license law constitutes a violation. T F
75. A salesman may advertise listings in his own name without mentioning his broker. T F
76. A broker should consent to the transfer of a salesman's license even though the salesman owes him money which the broker loaned him. T F
77. The Commission is empowered to subpoena persons to produce books and papers at a formal hearing for the revocation of a license. T F
78. A real estate broker's or salesman's license can, under no circumstances, be suspended without a formal hearing first being granted to the offender. T F
79. A real estate broker can be disciplined for the misconduct of his salesman, provided he had actual knowledge of such fact. T F
80. A real estate salesman's license can be issued to the vice-president of XYZ Realty Corporation. T F
81. After the revocation or suspension of a broker's or salesman's license, he is permitted to operate pending determination of his appeal to court. T F
82. A real estate brokerage business may be conducted by a salesman at his residence, without the necessity of obtaining a branch office license. T F
83. A real estate broker's license can be issued only to a person who maintains a definite place of business in the state. T F
84. The Commission may hold a hearing on its own motion if it does not have a verified written complaint from the complainant. T F
85. A salesman must carry his license with him at all times for identification. T F
86. Usually a salesman cannot transfer his license to the employ of another broker unless he obtains the consent of his former broker. T F
87. Controversy over the division of earned commissions should be brought before the Commission for settlement. T F
88. A real estate broker may employ only one salesman for each year he has been licensed as a broker. T F
89. A salesman's license must be displayed in a conspicuous place in his home or office. T F
90. A person who sells property under a court order is not required by law to have a license. T F
91. All licenses issued by the Commission are good for a period of one year from the date on which they are issued. T F
92. It requires a majority vote of a Real Estate Commission to suspend or revoke a license. T F
93. In many states, it is not necessary to be licensed to sell cemetery lots. T F
94. The broker should at all times be in possession of and display the license of his salesman. T F
95. A person may not engage in the real estate business until he has received his license. T F
96. The license law provides a schedule of commissions which may be charged by licensed brokers for making various real estate transactions. T F

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| 97. A salesman who has passed his examination can begin work immediately even though he has not received his license. | T | F |
| 98. A broker is liable for misconduct in a real estate matter even if he is a bonded real estate board member. | T | F |
| 99. Placing a For Sale sign on vacant property without the consent of the owner may jeopardize a broker's license. | T | F |
| 100. Principals of real estate schools are exempt from the license law in selling real estate. | T | F |
| 101. Subpoena means compelling a person to appear before the Commission at a hearing. | T | F |
| 102. All sales of real estate must be handled through a licensed real estate broker or licensed salesman. | T | F |
| 103. A municipality has no part in regulation of real estate brokers under the licensing act. | T | F |
| 104. The licensing act is not an act designed for revenue. | T | F |
| 105. A broker can employ any number of licensed salesmen. | T | F |
| 106. "Interim License" may be issued after an applicant has failed one examination, if he applies for the succeeding examination. | T | F |
| 107. The license law has eliminated "curbstone" brokers. | T | F |
| 108. A licensee paying a commission to an unlicensed person may lose his license on that account. | T | F |
| 109. The license law has eliminated the "opportunist" broker who horned in on a deal because he was a friend of the buyer. | T | F |
| 110. The license law is the greatest single factor in elevating the real estate business to professional status. | T | F |
| 111. A licensed salesman may supervise a branch office. | T | F |
| 112. A high school education as a requirement for a broker's license in every state would add to the professional status of the real estate business. | T | F |
| 113. No refund of fee can be made after a license is issued. | T | F |
| 114. Where a salesman makes misrepresentations without the knowledge or authority of his broker, the Real Estate Commission will not hold the broker responsible for the salesman's fraud. | T | F |
| 115. The failure of a real estate salesman to notify the Real Estate Commission of his change of employer within ten days automatically cancels his license. | T | F |
| 116. A broker desiring to operate under a firm name or a fictitious name must be so licensed. | T | F |
| 117. If a salesman ceases to be employed by his registered employer, his certificate remains in force. | T | F |
| 118. Recent court decisions hold that requirement of citizenship for licensure is unconstitutional. | T | F |
| 119. A salesman cannot legally continue to operate after expiration of his certificate and before renewal. | T | F |
| 120. A widow of a deceased broker may operate for the remainder of the license year under the decedent's license. | T | F |
| 121. A broker licensed in Michigan may act as a broker in any other state of the United States. | T | F |
| 122. A decision of a Real Estate Commission, upon a complaint, in favor of the licensee is final. | T | F |
| 123. No real estate broker may serve as a member of the Real Estate Commission. | T | F |
| 124. A member of the Real Estate Commission cannot operate as a broker during his tenure as Commissioner. | T | F |
| 125. A builder cannot employ a salesman to sell houses for him, for commission, unless the builder is licensed as a broker. | T | F |
| 126. An attorney-at-law may employ a salesman to sell real estate listed with the attorney for sale. | T | F |

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| 127. An unlicensed person making a real estate transaction is guilty of a misdemeanor (or a felony, in some states). | T | F |
| 128. A person over 75 years of age cannot obtain a broker's license. | T | F |
| 129. When deposit money is received by a real estate salesman, he is permitted by law to make use of such money for his personal account up to the amount of his rightful sales commission before the deal is closed. | T | F |
| 130. A licensed real estate salesman must be ready at all times, upon request, to show his license card. | T | F |
| 131. Real estate listings may be taken in the name of the salesman so long as any deal is closed in the name of the employing broker. | T | F |
| 132. A real estate office may be placed in charge of a licensed real estate salesman, in event of the broker's absence or illness, if the Real Estate Commission is so informed in writing. | T | F |
| 133. The act of a real estate salesman, within the scope of his authority, is considered to be the act of his employing broker. | T | F |
| 134. A salesman binds his broker for acts beyond the <i>actual</i> scope of his authority, if within the <i>apparent</i> scope of his authority. | T | F |
| 135. A broker who has authority to accept interest payments on a mortgage, also has authority to accept payment of the mortgage principal. | T | F |
| 136. It is a violation of the license law for a broker to engage in the real estate business on Sunday. | T | F |
| 137. A person who is not licensed may sell real estate for a friend if he does not charge any compensation. | T | F |
| 138. NAR and NAREB, Inc. are the same national organization. | T | F |
| 139. A licensee may renew his license at any time before the expiration of the following year. | T | F |
| 140. A salesman may not sue anyone except his broker for the collection of a real estate commission. | T | F |
| 141. The real estate license act was passed to restrict competition. | T | F |
| 142. The license law is a regulatory measure and not a revenue measure. | T | F |
| 143. The Real Estate Commission can regulate the type and size of sign that a broker must have on the outside of his place of business. | T | F |
| 144. A salesman may not copy the listings of his broker for use after he leaves his employment. | T | F |
| 145. A broker may sign an agreement of sale for his principal where he has an exclusive listing contract of employment. | T | F |
| 146. A license cannot be revoked for more than three years. | T | F |
| 147. A rule or regulation of the Real Estate Commission requiring a broker to give the owner a copy of the listing is valid. | T | F |
| 148. When moving his office to a new address, a broker must return his old license to the Commission and receive a new one issued for the new address. | T | F |
| 149. A broker licensed in another state may obtain a license in this state promptly upon payment of the regular fee. | T | F |
| 150. If a salesman severs his connections with a broker, the broker may transfer such salesman's license to a new salesman employee. | T | F |
| 151. The word "Realtor" may always be used in lieu of "Real Estate" in advertising a real estate brokerage business. | T | F |
| 152. If a real estate salesman works on a straight salary basis and does not participate in the commissions, he nevertheless requires a license. | T | F |
| 153. The license of a broker was revoked. The salesman may continue to operate under his present license. | T | F |
| 154. The Nebraska Real Estate Association and the Nebraska Real Estate Commission are the same. | T | F |
| 155. The main requirement for licensure is success in a previous business. | T | F |
| 156. A broker is not required to have a branch office license unless the branch office | | |

- maintained by him is located in another town or city. T F
157. A person must be a property owner in order to be licensed as a broker. T F
158. The Real Estate Commission may suspend the license of a broker found to be dishonest, without the formality of holding a hearing. T F
159. A broker who fails to give the owner a copy of the signed listing may lose his license. T F
160. A broker is not required to give the Commission notice if he moves his office to another location in the same community. T F
161. A salesman may leave the employ of one broker and go to work for another broker without notifying the Commission provided he applies for his license the following year under the new broker. T F
162. There should be a written contract between a broker and a salesman covering the terms of the salesman's employment. T F
163. A broker may maintain an office in a grocery store provided he has adequate office equipment. T F
164. A Justice of the Peace who sells real estate and employs a single salesman must be licensed. T F
165. The real estate broker's licensing act usually requires
- (a) active officers of a real estate corporation to have a broker's license. T F
 - (b) salesmen who work only on Sundays to be licensed. T F
 - (c) renewal of all licenses during May of each year. T F
 - (d) owner's consent or exclusive agency to place a For Sale sign on property listed. T F
 - (e) a written examination for real estate brokers. T F
 - (f) the licensing of persons who only sell summer cottages. T F
 - (g) the honesty and good repute of all broker applicants to be vouched for by at least two recommenders. T F
166. A broker is required to keep his office open to the public at least 40 hours a week. T F
167. An indictment of a real estate broker upon a charge of obtaining money under false pretense is *prima facie* grounds for suspension of license. T F
168. All Real Estate Commissioners are bonded for that office. T F
169. A real estate salesman cannot maintain a branch office in his home during evening hours. T F
170. It is the duty of the broker to notify the Commission when a salesman leaves his employ. T F
171. Rules and Regulations for licensees must be approved by the legislature before they are valid. T F
172. A fee is charged for a transfer of license or change of business address. T F
173. A licensee may be represented by counsel in a hearing before the Commission. T F
174. A Commission is a quasi-judicial body, not bound by strict rules of evidence. T F
175. The Code of Ethics supersedes the Rules and Regulations of the Commission. T F
176. Charging less than the usual rate of commission is grounds for suspension of license. T F
177. The Real Estate Commission acts as a collection agency for recovery of earnest money by a disappointed buyer. T F
178. A broker should keep records of each real estate transaction for at least three years. T F
179. A licensed real estate broker should be in charge of *each* branch office. T F
180. There is no *economic* justification for the real estate broker. T F
181. A broker may change a signed agreement of sale, if it is a minor change. T F
182. The members of the National Association of Realtors were largely responsible for the passage of every license law. T F
183. Rhode Island was the 50th state to pass a license law. T F
184. The National Association of Real Estate License Law Officials is a clearing house

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| for license law information. | T | F |
| 185. An agreement of sale, negotiated by an unlicensed person, is void. | T | F |
| 186. A school director could be a Commissioner in some states. | T | F |
| 187. When an unlicensed officer of a real estate brokerage corporation negotiates a deal, neither the corporation nor the officer is entitled to a commission. | T | F |
| 188. If a broker is delinquent in renewing his license and negotiates a sale, he cannot recover his commission. | T | F |
| 189. If a broker fails to give an owner a copy of the listing contract signed by the owner, he cannot recover a commission. | T | F |
| 190. It is good business practice for a broker managing an apartment building to receive secret rebates, provided he does not charge the owner more than the prevailing prices. | T | F |
| 191. A broker is duty bound to investigate a salesman's reputation for honesty, truthfulness and integrity before employing him. | T | F |
| 192. At a hearing, the broker or salesman is usually referred to as "the complainant." | T | F |
| 193. Every state now requires an examination as a prerequisite to a broker's license. | T | F |
| 194. California was the first state to pass a valid license law. | T | F |
| 195. A salesman's identification license card should be displayed in his broker's office. | T | F |
| 196. Concealment or omission of material facts may constitute misrepresentation. | T | F |
| 197. A Commission has power to suspend a broker's or salesman's license even if formal complaint has not been filed by an injured party. | T | F |
| 198. A real estate broker's license may be suspended temporarily before a hearing where a serious complaint has been filed. | T | F |
| 199. A broker is bound to turn over his books of record to a Commission investigator. | T | F |
| 200. The penalty for operating without a license upon a second conviction is the same as for a first offense. | T | F |
| 201. An owner may lawfully pay a commission to an unlicensed neighbor by giving him a power of attorney. | T | F |
| 202. A corporation may obtain a salesman's license in the employ of a licensed broker corporation. | T | F |
| 203. Where brokers are appointed to a Real Estate Commission, they are usually Realtors or Realtists. | T | F |
| 204. The case of an individual charged with operating without a license is first heard by the Real Estate Commission. | T | F |
| 205. A broker may revoke the license of his salesman, where he finds the salesman misrepresenting on a large scale. | T | F |
| 206. A forfeiture and liquidated damages mean the same thing. | T | F |
| 207. An auctioneer who is employed by a licensed broker does not need a license to sell real estate at public auction. | T | F |
| 208. A licensed broker and a licensed salesman may operate a partnership if the partnership papers are first filed with the Commission. | T | F |
| 209. It is unethical for a broker to rebate commissions to a buyer. | T | F |
| 210. A broker doing business under a fictitious name such as TRI CITY REALTY CO. must be registered with the county and/or state. | T | F |
| 211. The mailing of real estate brochures by a licensed broker in Pennsylvania to prospects in Kentucky requires him to be licensed in Kentucky. | T | F |
| 212. Violation of a state Fair Housing Act by a broker may be grounds for revocation of license. | T | F |
| 213. In California, it is not necessary to display, in the broker's office, his license or that of his salesmen. | T | F |
| 214. A broker's license may be suspended, where he has been indicted upon a criminal offense, without a hearing. | T | F |
| 215. The Truth in Lending Act, passed by Congress, is applicable to mortgage financing in every state. | T | F |
| 216. The Island of Guam requires brokers to be licensed. | T | F |

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| 217. Oregon was the first state to pass a valid license law. | T | F |
| 218. A broker cannot discharge a salesman for misconduct without first filing a complaint with the Real Estate Commission. | T | F |
| 219. A Rule or Regulation of the Commission beyond the framework of the license law is a usurpation of legislative authority. | T | F |
| 220. Failure to register a fictitious or trade name is grounds for suspension of license. | T | F |
| 221. Under the license law, the term "person" includes a firm, partnership, association or corporation. | T | F |
| 222. The Rules and Regulations of the Real Estate Commission always include a Code of Ethics. | T | F |
| 223. A broker, upon receiving his license, is integrated into the National Association of Realtors. | T | F |
| 224. In order to obtain a salesperson's license, it is necessary for the applicant to establish satisfactory real estate experience. | T | F |
| 225. Giving trading stamps or any other things of monetary value in connection with a listing, or sale, is a violation of the license law. | T | F |
| 226. A clerk in a real estate office is permitted to answer on the telephone all inquiries concerning a property advertised for sale. | T | F |
| 227. A salesperson can transfer the license from one broker to another broker without any formality. | T | F |
| 228. The license law provides that every salesperson is an independent contractor. | T | F |
| 229. The Florida Real Estate Commission may arbitrate commissions between brokers and their salespersons. | T | F |
| 230. A "part-time" salesperson does not require a license until that person has obtained a signed buyer for a property. | T | F |
| 231. A person who merely solicits listings does not require a license. | T | F |
| 232. A civil remedy may be invoked, as well as suspension or revocation of license, for mishandling trust accounts. | T | F |
| 233. The Attorney General has the rule-making authority for the Real Estate Commission. | T | F |
| 234. A broker can be disciplined if he negotiates for the sale of a property listed exclusively with another licensed broker, during the listing term. | T | F |
| 235. An attorney-at-law is exempt from meeting educational requirements for a salesperson's examination. | T | F |
| 236. Private real estate schools are licensed by the State Department of Education. | T | F |
| 237. Moral turpitude does not include an income tax violation as grounds for revocation of a broker's license. | T | F |
| 238. A broker's license may be revoked for employing part-time salespersons. | T | F |

Multiple Choice

(Answers to this section are on pages 712-713.)

1. In order to collect a commission, an executor or administrator of an estate must be licensed as a
 - (a) real estate broker.
 - (b) trustee.
 - (c) cestui que trust.
 - (d) none of these.
2. Before a real estate license can be suspended or revoked,
 - I. the licensee must have been convicted of embezzlement, conspiracy to defraud, forgery, or a similar offense.
 - II. the licensee must have a formal hearing before the Real Estate Commission.
 - (a) I only.
 - (b) II only.

- (c) both I and II.
 - (d) neither I nor II.
3. Ashe, a licensed broker, employed Helen Woods as a salesperson on October 11, 1977. She took her examination on October 18, 1977 and was notified on November 5, 1977 that she passed. Ms. Woods made a "quick" sale on October 19, 1977 for \$24,000. The transaction was closed on November 12, 1977. Under these circumstances:
- I. the seller can refuse to pay Ashe any commission.
 - II. both Ashe and Woods are subject to disciplinary action by the Real Estate Commission.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
4. An unlicensed clerk or secretary may properly give information to a caller
- (a) from a property listing card.
 - (b) by driving a prospect to a sample house and acting as a guide in the house.
 - (c) by accepting a check for \$25 "to hold" the house for a prospect.
 - (d) none of these.
5. A real estate broker doing business under a fictitious or assumed name must register said name with
- (a) the state corporation bureau.
 - (b) the Real Estate Commission.
 - (c) the proper County office.
 - (d) Department of Human Relations.
6. An officer of a corporation, who is actively engaged in real estate brokerage, must
- (a) own stock in the corporation.
 - (b) have a salesman's license.
 - (c) be a director of the corporation.
 - (d) have a broker's license.
7. A person may be prosecuted in a criminal court, under the license law, where said person is guilty of
- (a) perjury.
 - (b) operating an automobile without a driver's license, while driving a prospect to see a model home.
 - (c) failing to file a federal income tax return.
 - (d) negotiating the sale of real estate, without a real estate license.
8. A salesperson may operate a branch real estate office when
- (a) the broker directs the salesperson to do so.
 - (b) the salesperson is bonded.
 - (c) that person has passed all the required courses for a broker's license.
 - (d) none of these.
9. Adams is employed by owner, Beacon, as a general maintenance man for an apartment building. He receives \$200 salary each month, plus free occupancy of a three-room apartment. Upon occasion, he shows various apartments, quotes rents, and may accept a deposit check for an apartment. Beacon manages the building overall. Under these facts:
- I. Adams requires a broker's license.
 - II. Adams can be licensed as a salesperson.
- (a) I only.
 - (b) II only.
 - (c) either I or II.
 - (d) neither I nor II.
10. Real Estate Commissions have power to make reasonable Rules and Regulations. Which one of the following would be in excess of such power?
- (a) To require an examination.

- (b) To fix the time and place for examinations.
 - (c) To fix requirements for office, equipment, and signs.
 - (d) Regulation of trust accounts.
11. A real estate deal is made between a seller and buyer, without the services of a broker. They arrange with a licensed broker for a fee, to prepare certain instruments. Indicate whether he may lawfully prepare
- (a) contract of sale.
 - (b) deed.
 - (c) purchase money mortgage.
 - (d) none.
12. When a license is issued to a corporation, which one of the following is entitled to act as a real estate broker?
- (a) The president.
 - (b) One officer of the corporation.
 - (c) All officers of the corporation.
 - (d) The salesman-manager of the corporation.
13. Operating without a license subjects the person to
- (a) injunction proceedings.
 - (b) fine and/or imprisonment.
 - (c) Commission reprimand.
 - (d) a fine by the Commission.
14. What type of actions cannot be brought against a licensee who is guilty of fraud to his principal?
- (a) Court action for damages.
 - (b) File a complaint with Real Estate Commission.
 - (c) If a Realtor, file a complaint with his local Real Estate Board.
 - (d) File a complaint with the Attorney General.
15. Ethical standards which must be observed by brokers in real estate deals are determined by
- (a) the Better Business Bureau.
 - (b) the local Real Estate Board.
 - (c) the National Association of Realtors, or National Association of Realtists.
 - (d) law.
16. The main purpose of the license law is
- (a) to restrict competition.
 - (b) to protect the licensee from unethical conduct of other brokers.
 - (c) to protect the public.
 - (d) to educate the public.
17. Where an unlicensed salesman negotiated his first sale of real estate, the commission would be payable to the
- (a) salesman's broker only.
 - (b) no one.
 - (c) buyer.
 - (d) salesman.
18. Which group is exempt from the licensing law?
- (a) Referee in bankruptcy.
 - (b) Person handling leases only.
 - (c) Salesman employed by a builder.
 - (d) Person employed to sell subdivision lots.
19. A salesman applicant can solicit listings and talk to prospects when
- (a) he obtains his license.
 - (b) he has filed application for license.
 - (c) he takes examination.
 - (d) he passes examination.
20. A salesman, upon receiving his license, may operate from

- (a) the broker's principal office.
 - (b) any branch office in the county.
 - (c) address on the license.
 - (d) any office broker designates.
21. The Real Estate Commission shall at all times perform its official duties in such manner as to protect and safeguard the interests of
- (a) the State legislature.
 - (b) all real estate licensees.
 - (c) the general public.
 - (d) persons filing complaints against licensees.
22. The Commission has the power after due hearing to
- (a) suspend or revoke any license issued by it.
 - (b) assess a penal fine of \$1,000.
 - (c) suspend a license and impose a fine.
 - (d) issue an order of mandamus.
23. When a broker is licensed for the first time, he must
- (a) advertise the fact once in a newspaper of general circulation.
 - (b) have a sign on the outside of his place of business.
 - (c) sign a written lease for office for at least one year.
24. If a license is issued on October 1, it will expire
- (a) one year from date of issue.
 - (b) six months from date of issue.
 - (c) end of license year fixed by license law.
25. A salesman applicant for license must have the recommendation of
- (a) two property owners.
 - (b) two citizens.
 - (c) his former employer.
 - (d) his prospective broker-employer.
26. Since violations of the license law are detrimental to the public and licensees generally, it is your duty to
- (a) keep quiet about them.
 - (b) inform the newspapers so they may be exposed.
 - (c) notify the Real Estate Commission.
 - (d) notify the local real estate board.
27. A salesman employed by another broker wishes to join your firm: what ethical procedure should you follow?
- (a) Employ him immediately.
 - (b) Write to the Real Estate Commission.
 - (c) Notify the other broker in writing.
 - (d) Call the other broker and have an understanding with him.
28. Appointments to the Real Estate Commission in states requiring an examination are made by the
- (a) Superintendent of Public Instructions.
 - (b) Insurance Commissioner.
 - (c) Secretary of State.
 - (d) Governor.
29. For a broker to act for more than one party in a real estate transaction without the knowledge and consent of all parties is
- (a) ethical.
 - (b) grounds for disciplinary action.
 - (c) contrary to the Administrative Code.
 - (d) all right if no party suffers monetary damage.
30. Where a broker is found guilty of fraud in a real estate transaction by a Human Relations Commission, the Real Estate Commission may
- I revoke his license immediately, without hearing.

- II bring a “cease and desist” action in court.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 31. Which of the following acts, if performed by a person on behalf of a third person for a promised commission, will constitute him a real estate broker and necessitate his procuring a license?
 - (a) Collecting rent on real estate.
 - (b) Offering to sell machinery necessary to farm real estate.
 - (c) Offering to collect rents for a mortgagee in possession.
 - (d) Offering to build buildings on real estate as a contractor.
- 32. A salesman’s license must always be
 - (a) carried by the salesman on his person.
 - (b) kept in salesman’s kit.
 - (c) displayed in broker’s office.
 - (d) held by the Real Estate Commission.
- 33. Persons found guilty of operating in the real estate business without a license may be fined by
 - (a) the District Attorney.
 - (b) a court of law.
 - (c) the Real Estate Commission.
 - (d) the Attorney General.
- 34. When a real estate broker discharges a salesman in his employ for dishonesty or any other reason, he must notify the Real Estate Commission
 - (a) within ten days (usually).
 - (b) immediately.
 - (c) within 30 days.
 - (d) any time during the license period.
- 35. The Executive Secretary or Director to the Real Estate Commission is
 - (a) an ex-officio member of the Commission.
 - (b) a voting member of the Commission in case of a tie vote.
 - (c) the prosecuting officer at a formal hearing of the Commission.
 - (d) none of these.
- 36. Before a licensee can be disciplined there must be a formal hearing before
 - (a) the attorney-general.
 - (b) Consumer’s Bureau of Regulation.
 - (3) a Justice of the Peace or Magistrate.
 - (d) the Real Estate Commission.
- 37. The superintendent of a large apartment building may sell the owner’s real estate, if that person
 - (a) is licensed as a salesperson.
 - (b) is licensed as a broker.
 - (c) obtains a mercantile license.
 - (d) obtains a Commission-approved surety bond.
- 38. A licensee, convicted of forgery, may have his or her license revoked
 - I. by a Court.
 - II. by the real estate license law tribunal.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 39. The executor of an estate, in order to sell estate real estate, must be licensed by
 - (a) the probate court.
 - (b) the real estate licensing agency.

- (c) the county.
 - (d) no one.
40. In order to invoke any disciplinary action against a licensee, there must first have been
- I. a formal notarized complaint filed with the Real Estate Commission.
 - II. a hearing held before the State Attorney General.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
41. Any person who collects a real estate commission and is not licensed is guilty of
- (a) duress.
 - (b) an unethical act.
 - (c) a misdemeanor.
 - (d) negligence.
42. What is the origin of the statement, "No sign should ever be placed on any property without the consent of the owner" ?
- (a) State law.
 - (b) Regulations of the Real Estate Commission.
 - (c) Code of Ethics of the National Assn. of Realtors.
43. When a real estate broker engaged in business as a corporation violates the real estate law, the officer subject to the prescribed penalties is
- (a) its president.
 - (b) its secretary.
 - (c) its general manager.
 - (d) the officer who commits such violation.
44. The Real Estate Commission may revoke the license of a broker who is found guilty of
- (a) slandering his competitors.
 - (b) intemperance.
 - (c) misrepresentation.
 - (d) any violation of the motor vehicle code.
45. A salesman who is guilty of any grounds for disciplinary action may
- (a) be subject to a criminal prosecution.
 - (b) have his license suspended or revoked.
 - (c) be subject to (a) and (b).
 - (d) be subject to a civil action by his broker.
46. Upon a revocation or suspension order by the Real Estate Commission, the broker
- (a) may appeal to court.
 - (b) may request a review by Attorney General.
 - (c) Commission order is final.
 - (d) may apply for a salesman's license.
47. The license law requires a broker to
- (a) spend all his time in the real estate business.
 - (b) spend more than one-half of his time in the real estate business.
 - (c) makes no provision as to time a broker must spend in real estate business.
 - (d) make a real estate business his major activity.
48. The Commission is empowered to require every real estate broker to have a license before transacting any such business by virtue of
- (a) the Real Estate Brokers License Act.
 - (b) Rules and Regulations of the Real Estate Commission.
 - (c) the Code of Ethics.
 - (d) Statute of Frauds.
49. For his acts in connection with business, a real estate salesman is usually responsible to the
- (a) seller.
 - (b) mortgagee.

- (c) buyer.
- (d) employing broker.
- 50. The Real Estate License Law was passed
 - (a) to raise revenue.
 - (b) to protect the public.
 - (c) to restrict competition.
 - (d) to keep brokers from cheating each other.
- 51. There are three elements necessary to constitute fraud in a misrepresentation. Two of these are that the misrepresentation concerns a material fact and that the party to whom the statement is made has a right to rely upon it. The third element necessary is that:
 - (a) the property will resell for a particular amount.
 - (b) the statement is funny.
 - (c) the broker knows the truth.
 - (d) the party to whom the statement is made acts on it to his detriment.
 - (e) the prospect did not employ the broker.
- 52. A prospect, or person with whom the broker is dealing "at arm's length," when he is in the locality and able to inspect the property for himself, ordinarily has a right to rely on the broker's representations as to
 - (a) everything the broker says.
 - (b) nothing the broker says.
 - (c) future prospects of the property.
 - (d) patent defects in construction of the building.
 - (e) concealed details of construction of the building.
- 53. The criminal provisions of the license law may be invoked where a broker is guilty of
 - (a) double commissions.
 - (b) adverse interest.
 - (c) embezzlement.
 - (d) operating without a license.
 - (e) fraud.
- 54. A builder who desires to employ a salesman for commission to sell houses built by him must
 - (a) have the salesman obtain a salesman's license.
 - (b) notify the Commission of the contract between the builder and the salesman.
 - (c) obtain a broker's license.
 - (d) pay the salesman less than the usual commission.
- 55. Which of the following is not grounds for revocation of a broker's license?
 - (a) Misrepresentation.
 - (b) Charging a 10 percent commission on improved property.
 - (c) The crime of extortion.
- 56. Deposit money received by a salesman must be turned over to
 - (a) owner.
 - (b) Real Estate Commission.
 - (c) broker for deposit in his trustee account.
 - (d) seller's attorney.
- 57. A real estate salesman who changes his employer must
 - (a) notify his local real estate board.
 - (b) notify the abstract or recorder of deeds.
 - (c) notify the local member of the Real Estate Commission.
 - (d) notify, in writing, the office of the Real Estate Commission.
- 58. No real estate should be advertised except in the name of the
 - (a) seller.
 - (b) salesman who obtains the listing.
 - (c) principal-licensed broker.
 - (d) real estate salesman on the premises.

59. A Realtor is a member in good standing of the
- (a) Real Estate Commission.
 - (b) National Association of Real Estate License Law Officials.
 - (c) local real estate board, affiliated with the National Association of Realtors.
 - (d) local Chamber of Commerce.
60. A real estate salesman's license may be revoked for
- (a) slandering his competitor.
 - (b) failure to spend forty hours per week as a real estate salesman.
 - (c) violation of NAR's code of ethics.
 - (d) misrepresentation in a real estate transaction.
 - (e) violation of a local zoning ordinance.
61. A broker's license may be suspended or revoked for which of the following causes?
- (a) Overcharge of a sales commission in a real estate transaction.
 - (b) Conviction of a motor vehicle violation.
 - (c) Failure to pay a money judgment entered by a J. P.
 - (d) Failure to account for or remit funds belonging to others.
62. Where Broker "A" has an exclusive listing for 90 days from an owner, who, 30 days later, desires to list the property with Broker "B," the latter broker should
- I notify Broker "A" and accept the listing after 30 days.
 - II refuse to take the listing.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
63. A license is issued to Ajax Realty, Inc. Who may operate as a broker for the corporation?
- (a) Any officer.
 - (b) The person named in the license to the corporation.
 - (c) Only the president.
 - (d) The officer longest with the corporation.
64. It is whose duty to prosecute persons engaged in the real estate business without a license?
- (a) District Attorney.
 - (b) Attorney General.
 - (c) Real Estate Commission.
 - (d) Tax Collector.
65. A salesman and broker desire to engage in the real estate business as a partnership. They may
- (a) register the partnership with the broker as the active broker, and the salesman as an employee.
 - (b) not do so.
 - (c) be registered as officers of the same corporation.
 - (d) be registered as a joint venture.
66. A broker licensed in California who wishes to sell property in an adjoining state
- (a) since he is licensed in California can also operate in all other states automatically.
 - (b) should immediately contact the proper agency in the adjoining state to obtain a license there.
 - (c) must contact a broker in the adjoining state and work through him only.
67. A real estate salesman may lawfully accept a bonus commission for the completion of a difficult sale
- (a) if the seller gives it to him directly.
 - (b) if he pays the tax on it.
 - (c) from his employing broker.
 - (d) if he receives it from the buyer.
68. A broker has a written promise of a \$500 commission if he can secure certain acreage. The owner agrees to sell if he can keep one-fourth of the mineral rights and will pay

- the broker \$500 commission. The transaction was closed. The seller knew of the broker's commission arrangement with the buyer. Which of the following is true?
- (a) Broker made a clever deal and was entitled to the extra earnings.
 - (b) Broker is subject to disciplinary action by Commission.
 - (c) Since the seller knew of the fee paid by buyer, it was ethical.
 - (d) Broker violated the Statute of Frauds.
69. An unlicensed broker cannot collect a real estate commission in court because
- (a) Statute of Frauds prohibits it.
 - (b) it violates the rules of the Real Estate Commission.
 - (c) it violates a state law.
 - (d) it violates an Act of Congress.
70. A property listed with a broker should not be advertised for sale except in the name of the
- (a) owner.
 - (b) salesman to whom property is assigned.
 - (c) broker.
 - (d) tenant in possession.
71. In transferring from one broker "A" to broker "B" a salesman should
- (a) notify Broker "A" that he is leaving.
 - (b) start working immediately for "B" and notify "A" within ten days.
 - (c) first notify Real Estate Commission of change and request transfer of license.
 - (d) post his license in "B's" office.
72. Broker "A" has a listing on a property. Broker "B" has a prospect. "B" should
- (a) obtain prospect's signature to an offer to purchase.
 - (b) obtain listing from owner.
 - (c) contact "A" and obtain his permission to act as co-broker.
 - (d) do nothing.
73. License laws were sponsored by
- (a) the public.
 - (b) organized real estate boards.
 - (c) individual brokers.
 - (d) the credit associations.
74. A salesman may operate a branch office for his broker
- (a) if his salesman's license is displayed.
 - (b) if his broker's license is displayed.
 - (c) if the office is in another municipality.
 - (d) under no circumstances.
75. A real estate broker's license which has been revoked may be reinstated
- (a) by paying a penalty fine.
 - (b) by qualifying as an original applicant.
 - (c) by making application for a writ of mandamus.
 - (d) by making written application to Commission for reinstatement.
76. Adams does business as the Excelsior Realty Co. He has a broker's license. He has not registered his trade name.
- (a) He can be fined by the Real Estate Commission.
 - (b) He will lose his commission on any sale.
 - (c) He can be fined by a court.
 - (d) He will receive a reprimand.
77. A broker's license may be revoked for
- (a) failure to account for or to remit funds belonging to others.
 - (b) failure to charge any commission.
 - (c) making sales on Sunday.
 - (d) failure to make a sale within one year.
78. Which persons are specifically exempt from the Real Estate Licensing Act ?
- (a) War veterans.

- (b) Executors.
 - (c) Part-time salesmen.
 - (d) Listers of real estate.
79. The term "Realtor" is a copyrighted word and can be used only by
- (a) any licensed broker.
 - (b) brokers who are full time.
 - (c) a member of the National Association of Realtors.
 - (d) none of the foregoing.
80. When a broker discharges a salesman, he should
- (a) give the salesman his license.
 - (b) return the license to the Real Estate Commission.
 - (c) remove license from wall and keep it in file until all of salesman's deals have been closed out.
 - (d) instruct salesman to return license to Real Estate Commission.
81. An appeal from a decision of the Commission may be taken to
- (a) Attorney General of the State.
 - (b) directly to the Supreme Court.
 - (c) Circuit, District Court or Common Pleas Court.
 - (d) Civil Service Board.
82. A license may be revoked upon proof of
- (a) charging more than the usual rate of commission.
 - (b) dispute between broker and salesman as to a commission.
 - (c) violation of F.H.A. law.
 - (d) refusal to accept a listing.
83. A license issued on May 15 is valid until
- (a) May 15 of the following year.
 - (b) end of current license year.
 - (c) January 15 of the following year.
 - (d) 60 days.
84. A salesman, in transferring to a new broker employer, should make application
- (a) at next renewal period.
 - (b) within 60 days.
 - (c) within 30 days.
 - (d) immediately.
85. A broker's license is revoked for one year. His two salesmen
- (a) must remain on inactive status the balance of the license year.
 - (b) would lose their licenses for one year.
 - (c) may, upon proper application, transfer to another broker.
 - (d) may continue to operate the broker's business.
86. A licensed broker selling a property on which he holds an option must notify the buyer that he is the
- (a) optionee.
 - (b) optionor.
 - (c) tenant.
 - (d) lessee.
 - (e) escrow holder.
87. A member of the National Association of Real Estate License Law Officials is a
- (a) Realtor.
 - (b) licensed broker.
 - (c) license law state.
 - (d) Secretary of State.
88. James Stone passes the license law examination and can forthwith have the license issued in the name of
- (a) James Stone and Company.
 - (b) James Stone d/b/a Ajax Realty Co.

- (c) James Stone.
 - (d) James Stone, Realtor.
89. The Real Estate Commission sets the maximum commission to be charged as
- (a) 5 percent.
 - (b) 6 percent.
 - (c) 7 percent.
 - (d) no maximum.
90. A licensed broker may share a commission with
- (a) the person who introduced the buyer to the broker.
 - (b) salesman of another broker, who assisted in the sale.
 - (c) a licensed broker who assisted in sale.
 - (d) an attorney at law, who is a friend of the seller.
91. John Sloan is a licensed salesman who desires to transfer his license to Samuel Simon, trading as Eureka Realty Co.
- (a) His license should be transferred as a salesman in employ of Samuel Simon.
 - (b) His license should be transferred as a salesman in employ of Eureka Realty Co.
 - (c) His license should be kept in name of former employer.
 - (d) He should do nothing.
92. When a licensed broker becomes physically disabled, his business may be operated by
- (a) his widow.
 - (b) his chief salesman.
 - (c) his office manager.
 - (d) none of these.
93. In participating in a "dual contract" situation, which ones of the following participants would be subject to criminal prosecution?
- (a) Buyer.
 - (b) Seller.
 - (c) Broker.
 - (d) Lending institution representative.
94. Which of the following statement(s) is (are) true?
- I. An unlicensed person may advertise as an independent real estate agent, but not as a Realtor or Realist.
 - II. An unlicensed person may solicit listings to be paid by a broker.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
95. Before a Commission may suspend or revoke a real estate license, in a discrimination case, which of the following must have occurred?
- I. Been found guilty by the Human Relations Commission of the State.
 - II. Afforded a hearing before the Commission.
- (a) I only.
 - (b) II only.
 - (c) I and II.
 - (d) neither I nor II.
96. Which one of the following may sell real estate for a commission, without a license?
- (a) An executor.
 - (b) A register of wills.
 - (c) A clerk of courts.
 - (d) A certified public accountant.
97. A broker's license may be issued to a corporation provided
- I. all of its officers are licensed as brokers.
 - II. one active officer, at least, is licensed as a broker.
- (a) I only.
 - (b) II only.

- (c) I and II.
 - (d) neither I nor II.
98. A salesperson made several material misrepresentations in a sales presentation without the knowledge of his broker, resulting in the revocation of the salesperson's license.
- I. The salesperson's license can be revoked.
 - II. The broker's license cannot be revoked.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
99. The best way for a new licensee to operate professionally is:
- I. to take real estate and related courses.
 - II. to study state license law and Rules and Regulations.
- (a) I only.
 - (b) II only.
 - (c) I and II.
 - (d) neither I nor II.
100. A broker offered a free color television set if he would purchase the house in which he was definitely interested at the listed price of \$19,500. The buyer agreed. The broker, under these circumstances:
- (a) would be liable to the seller for the cost of the TV set.
 - (b) could refuse to deliver the TV.
 - (c) could lose his license.
 - (d) nothing could be done against the broker.
101. A broker advertised a listed property, stating "For details call 412/281-8030." A sale results.
- (a) The broker cannot collect a commission.
 - (b) He is guilty of a misdemeanor.
 - (c) He may have his license suspended or revoked.
 - (d) The buyer has a cause of action against the broker.
102. A salesman, Green, employed by Broker "B", procured a signed agreement from a buyer, reciting a \$300 earnest money deposit. It was a note for \$300, and neither the salesman nor the broker told the owner that it was a note.
- I. The broker is guilty of making a false promise through an agent or salesperson.
 - II. The broker is guilty of conduct which demonstrates incompetency, bad faith, or dishonesty.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
103. Rules and Regulations of a Real Estate Commission, in conflict with a single clause in the license law,
- I. supersede the license law.
 - II. implement the license law.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
104. Under the police power, the state can
- (a) regulate licensing of real estate brokers.
 - (b) arbitrate major league baseball and football controversies.
 - (c) appoint real estate commissioners.
 - (d) none of these.
105. Stone, who is unlicensed, negotiates a sale from Miller to Flynn. Miller pays Stone \$950 commission. Under these circumstances:

- I. the agreement of sale, prepared by Stone, is void.
 - II. Miller may recover the commission paid.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
106. The number of educational credits required before taking the real estate examination, may be increased by the
- (a) State Department of Education.
 - (b) Real Estate Commission.
 - (c) legislature.
 - (d) Regional College Accreditation Board.
107. A salesperson may show properties for sale
- (a) when that salesperson has obtained a broker-employer.
 - (b) when that salesperson has been notified by the Real Estate Commission that such person has passed the state examination.
 - (c) when the broker has received that salesperson's license.
 - (d) when the broker has become a member of the local real estate board.
108. Atkins passed his examination for a real estate salesperson's license. However, the Real Estate Commission refused to issue a license because his insurance license had been revoked, as he had been found guilty of many acts of fraud, misrepresentation and dishonesty, as an insurance agent. The applicant
- (a) can obtain a cease and desist order against the Real Estate Commission.
 - (b) can compel the issuance of a license through a mandamus proceeding.
 - (c) can file an equity action, and operate in the interim.
 - (d) has no recourse.
109. A state license law does not specifically include good repute as a requisite for licensure. The law does provide, among grounds for suspension or revocation of license, "bad faith, dishonesty, or untrustworthiness" in a real estate transaction. Bell passed his real estate examination, but the Real Estate Commission refused to issue a license because he had been convicted of an F.H.A. violation in 1977. Upon appeal to Court, the applicant argued that, in the absence of the good repute requirement for licensure in the law, the Commission acted excessively in denial of his license. Under these circumstances, the Court would hold that
- I. the refusal was proper.
 - II. the Commission's power to refuse a license is coextensive with its power to revoke a license.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
110. Bales, a buyer, filed a complaint with the Texas Real Estate Commission against Brown, a licensed broker, on February 21, 1978, claiming that Brown had wrongfully withheld \$800 due him on March 24, 1975. He also asked for payment of the \$800 under the Recovery Fund Act. Upon hearing held, Bales proves his case. Under these circumstances:
- I. the license of Brown should be suspended or revoked.
 - II. Bales should be reimbursed from the Recovery Fund.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
111. Stone, a broker, listed Horne's property for sale. Wilson, a broker, negotiated with Stone for purchase of the property, which he desired to use as his home. He signed a receipt and option agreement, but he was unable to close on the agreed date and deposit was returned to him. Later, Wilson contacted Horne in an effort to purchase the

property, and prepared an agreement which recited that Wilson and Stone would share the commission equally. Stone had no knowledge of this contract. The property was sold to a third party, Harris, and Wilson recorded his first agreement. Under these facts,

- (a) the Real Estate Commission has no authority, as Wilson was acting as a principal.
 - (b) the Commission can suspend Wilson's license.
 - (c) a county court should take original jurisdiction of the matter.
 - (d) none of the above.
112. A person may be prosecuted criminally when charged, under the license law, with
- (a) fraud.
 - (b) perjury.
 - (c) reckless driving.
 - (d) operating without a license.
113. Adams, a broker, negotiated the sale of a frame dwelling to Blake on March 21, 1977. He misrepresented that the property was not infested with termites. The following summer, it was necessary to employ an exterminator to eliminate this condition at a cost of \$450. Blake filed a complaint with the Real Estate Commission for misrepresentation and also brought a civil suit against Adams for \$450, and costs. Under these circumstances,
- I. the license of Adams can be suspended or revoked.
 - II. Blake can recover in the civil suit.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
114. Burke, a licensed broker, dealt directly with the owner, Curtis, for the purchase of a home for himself, which property was listed exclusively with Davis, Inc., a fact known to Burke. Under these circumstances,
- I. Burke must pay Davis, Inc. a full commission.
 - II. Burke's license may be suspended or revoked.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
115. Haines, a licensed broker, is selling his home to Edwards. The purchase price is \$22,000 and Edwards pays Haines \$1,000 deposit. In the negotiations, he misrepresents certain F.H.A. regulations, in order to obtain \$19,000 financing for Edwards. The deal falls through. Edwards files a claim with the Real Estate Commission. Haines' answer is that he was not acting as a broker, but as an owner. Under these circumstances,
- I. Edwards is entitled to a \$1,000 refund.
 - II. the license of Haines may be suspended or revoked.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
116. The real estate brokers' license law was passed under
- (a) the revenue act.
 - (b) the power of eminent domain.
 - (c) the police power.
 - (d) the state omnibus act.
117. A licensee convicted of forgery may have his license suspended or revoked by
- I. the Court.
 - II. the Real Estate Commission or Department.
- (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.

CONDOMINIUMS, COOPERATIVES, SYNDICATIONS, INVESTMENT TRUSTS, REAL ESTATE v. SECURITIES, INTERSTATE LAND SALES

CONDOMINIUMS AND COOPERATIVES are forms of legal organization which provide individuals with many of the benefits of private ownership in multiple-unit buildings or developments, particularly housing developments. The two forms are substantially different in legal theory and in many respects are governed by different laws.

The condominium, although its origins go back to antiquity, is today essentially a creature of statute. Its method of organization and operation and its essential characteristics are expressly defined in legislation.¹ Without such legislation, it could not be successfully adapted to the complex requirements of mortgage financing, FHA insurance, title insurance, taxation, and many other facets of modern large-scale real estate development.

The peculiar characteristic of the condominium is that, unlike a conventional rental apartment building or a cooperative housing building, there is no one owner to whom public authorities, creditors, occupants or third parties can look for enforcement of rights or liabilities. Absent a statutory solution, there would be no generally accepted formula for integrating the total operation of the condominium so that it can be accommodated to established commercial practices. Each owner of a unit in the multiple development has exclusive title to his own unit and he is generally free to deal with it as though it were a private dwelling. Only the common elements of the condominium are under the control of a common manager, and absent a statutory requirement, even this responsibility could take any form which the unit owners saw fit to select.

A second peculiar aspect of the condominium is that traditional rules of real estate law and conventional financial techniques are not easily adapted to multiple unit ownerships in a common structure, particularly in high-rise buildings where an "air lot" must be treated as a private dwelling.

To overcome these limitations, statutes prescribe in some detail how the condominium must be organized and operated, so that the rights and duties of all persons associated with, or dealing with, the condominium can rely on a functional entity with its essential elements defined. Under these statutes, the basic "charter" of the condominium is established by the filing of a "condominium declaration," by-laws and floor plans with the appropriate public authorities. The "declaration" commits

¹ See, e.g., The Condominium Act, N.Y. Real Property L., Art. 9.B (par. 339-d et seq.) 1964, as amended.

the signers to submit the property to the provisions of the statute, and describes, among other things, the land, the building and improvements, the number and location of each unit, the common elements, and the intended use of the building and of each unit. The floor plans show the layout, locations and dimensions of the units and contain unit designations conforming to official tax lot numbers.

The by-laws govern the operation of the property. They provide, among other things, for the election of a board of managers and define their powers and duties. They determine whether the board will manage the property or delegate this responsibility to a managing agent. They define the extent to which the board of managers can bind the unit owners. They prescribe the method of determining and collecting the common charges and the establishment of reserves. Restrictions on use, provisions governing alienation, sale or leasing of units, and other essential elements of the legal structure are also determined.^{1.1}

Since most cooperatives are corporations which retain ownership of the property, they do not require statutory implementation to give them organizational identity. Conventional corporate practices provide many of the organizational solutions dealt with in the condominium statutes. Specific state legislation, where it exists, usually deals with specialized problems of the cooperative. A few states have adopted legislation dealing generally with cooperative organization, but the purpose of such legislation is to provide a local equivalent of the federal securities laws, viz, to protect the public against fraudulent or misleading public offerings of cooperative shares. In most states such protection of investors is afforded through the normal operation of the so-called "Blue Sky" laws.

In New York, for example,² a person is prohibited from taking part in a public offering or sale of "cooperative interests in realty," unless and until there shall have been filed with the appropriate public authority, an "offering statement" or "prospectus," containing designated information and representations, and the Attorney General has issued to the issuer or other offeror a letter stating that the offering has been filed. The required information is essentially similar to that required in a "condominium declaration," outlined above, except, of course, for the differences implicit in the two kinds of offerings.

Ownership differences: condominiums and co-ops

The purchaser of a condominium receives a deed which gives him ownership of his individual unit, in the same sense as ownership of a house. He also receives an interest in the commonly shared elements of the condominium, such as lawns, corridors, elevators, basement, and lobby. In resort condominiums, these may also include community facilities, such as a golf club, swimming pool or social center.^{2.1} Resort condominium offerings often include the device of a "rental pool," whereby

^{1.1} See Annotation, "Transfer of, and voting rights in, stock of cooperative apartment association," 99 A.L.R. 2d 236 (1965).

² N.Y. Gen.Bus.Law, Sec. 352(e). This statute also applies to condominium sales offerings. 160 West 87th Street Corp. v. Lefkowitz, 350 N.Y.S. 2d 957, (1974), sustains the constitutionality of this statute against a challenge that the power of the Attorney General to withhold approval of a co-op plan without notice and hearing is a deprivation of property without due process. Subd. 2-a of Sec. 352(e), which required the participation of at least 35% of tenants in occupancy before a rental building could be converted to a co-op or condominium, expired on July 1, 1977, because the legislative houses could not agree on new conversion legislation.

^{2.1} Frequently, the purchaser receives an interest in the underlying land as well as the fee simple title to his unit. In either case, the sponsor retains ownership of recreational facilities which he leases to the unit owners. Mandatory recreational leases have been challenged as "tie-ins" in violation of the anti-trust laws.

the promoter undertakes to rent the unit on behalf of the owner during periods when the owner is not using his unit.

He pays his own taxes and mortgage indebtedness, and he sells or leases his unit as real estate, subject only to such limitations as may be contained in or authorized by the condominium by-laws. The common elements are managed and controlled by the board of managers and the unit owner is obligated by the by-laws to pay his proportionate part of the common charges for maintenance and repair.

In a cooperative development, the corporation owns the entire project. The purchaser of a unit does not become an owner of real estate; instead he becomes a stockholder in the corporation which owns the land and the building. The number of shares he receives is usually based on the value of his unit in relation to the value of the whole project. His stock holding entitles him to a long-term proprietary lease of the unit which he "purchases." The stock holding and the leasehold ownership must reside in a common owner; the interests cannot be disposed of separately. As a shareholder, he has the right to vote annually for the Board of Directors who conduct the affairs of the corporation and supervise the operation of the building. As a lessee, he pays as rent (customarily called "maintenance charges") a proportionate share of the corporation's cash requirements for the operation, maintenance and repair of the building, including mortgage payments and real estate taxes, and for such reserve for contingencies as the Board of Directors determines. His combined interest in the stock and the lease is recognized for many purposes as *personalty*, not *realty*.³

Mortgages and financing

As an owner of real estate, the owner of a condominium unit can mortgage his property essentially as he would if he owned a private residence. He thus has the option to buy his unit unencumbered by a mortgage or he can raise money to purchase the unit through first mortgage financing. Significantly, mortgage loans on condominiums are generally considered to be legal investments for banks and other fiduciaries. On the other side of the coin, however, the sponsor or manager of the condominium enterprise retains no interest to support a blanket mortgage on the entire project after completion of construction and sale of individual units.

Since the co-op corporation retains title to the land and building, notwithstanding the leasing of units to tenant/shareholders, it can, and usually does, place a blanket mortgage on the entire project. The tenant/shareholder, however, ordinarily cannot obtain a mortgage on the basis of his stock and proprietary lease,⁴ because: (1) the nature of his holding—whether real estate or *personalty*—for mortgage pur-

³ Categorizing co-op ownership as "*realty*" or "*personalty*" for various legal purposes has lead to unrealistic results at times and has created dilemmas for those who must determine whether to apply the fundamentally different bodies of law governing each category. See *Miller's Estate*, 130 N.Y.S. 2d 295 (1954), holding that a co-op apartment passes under an estate as personal property; *Silverman v. Alcoa Plaza Associates*, 323 N.Y.S. 2d 39 (1971), holding that upon default by purchaser of co-op, seller corporation could not retain down payment, applying Uniform Commercial Code provisions applicable to *personalty*. Justice Steuer, dissenting, points out, however, that the Courts have recognized co-ops as real estate for some purposes. See, also, *In Re Pitts Estate*, 218 Cal. 184, 22 P. 2d 694 (1933); *matter of State Tax Com. v. Shor*, 53 N.Y. App. Div. 2d 814(8), (1976).

⁴ New York specifically authorizes banks and savings and loan associations to grant loans on cooperatives: Ch. 376, McKinney's 1971, amended by Chap. 596, McKinney's 1972, Session Laws of N.Y., and liberalized by L. 1976, Chap. 534, s. 1. The program authorizes banks to charge 1.5 percentage points more for a co-op loan than for a one-family residence mortgage, on the premise that the co-op loan is not as secure as the conventional mortgage because of the underlying mortgage on the entire development.

poses is uncertain; (2) the underlying mortgage on the entire project renders his mortgage less secure; and (3) transfers of tenant/shareholder's interest, upon foreclosures, are complicated by the usual co-op requirement that a new tenant/stockholder be approved by the Board of Directors of the corporation.⁵

As an individual mortgagor, the condominium unit owner usually assumes personal liability for the mortgage obligation. The co-op tenant/shareholder has the advantage that he is not personally liable to the mortgagee on the blanket mortgage placed by the corporation. But the condominium owner's title is not jeopardized by the default of another owner, whereas a default by the corporation on a blanket mortgage jeopardizes the interests of *all* the tenant/shareholders.

Repairs and maintenance

Tenant/shareholders in a co-op pay their assessments for repairs and maintenance in the form of rent. Unit owners in a condominium pay such assessments by virtue of the by-laws governing the condominium. Should it become necessary to raise abnormally large sums for repairs or improvements, the co-op corporation, as owner of the property, may in principle have more flexibility than the condominium, since it may have access to mortgage refinancing or other secured borrowing, in addition to the right to assess tenant/shareholders.

Tax considerations

Since each condominium unit is separately owned, it is separately billed for local tax purposes. Default in payment of taxes by the owner of one unit does not jeopardize the owners of other units. The co-op corporation, on the other hand, is assessed and taxed as an entity, and in the event of default by the corporation, the individual unit owner's interest could be foreclosed.

Both the condominium and the cooperative owner are entitled to deduct mortgage interest and real estate taxes from their federal income taxes. The respective deductions are based on different statutory provisions, however. The condominium falls within the normal tax provisions governing real estate, but the cooperative must meet the specific requirements of a separate provision of the Internal Revenue Code,⁶ which requires that the taxpayer be a tenant/shareholder, that the co-op entity receive 80% or more of its income from tenant/shareholders, and that it have only one class of stock outstanding with no right to dividends.

The section of the Internal Revenue Code⁷ which provides for non-taxability on the sale of a principal residence, if a new principal residence is purchased within a year at a cost equal to or more than the sales price of the old residence, applies to both the condominium and the cooperative. The benefit accorded to a person 65 or older who sells his principal residence also applies to both condominiums and co-ops.⁸

The Tax Reform Act of 1976 has made some changes in the manner in which homeowners' associations, including cooperative housing corporations and condominiums, will be taxed. See the *Journal of Taxation*, Vol. 46, No. 4, April, 1977, page 204.

⁵ Condominiums also require approval of the association before a unit can be sold, but in practice, the requirement is usually relaxed in favor of an approved mortgagee who acquires title to a unit.

⁶ IRC, Sec. 216.

⁷ IRC, Sec. 1034.

⁸ IRC, Sec. 121. Under the Tax Reform Act of 1976, no gain is recognized on the sale of a principal residence up to a maximum sale price of \$35,000 (increased from \$20,000) by an individual who is at least 65 years of age.

Condominiums for non-residential purposes

There is growing interest in employing the condominium form to non-residential development. Adapting the condominium to such uses, however, will require greater flexibility than is currently allowed under State laws. Present laws, for example, frequently do not permit condominium buildings on leased lands. Their provisions governing unit ownership, allocation of percentages of interest in common elements, sharing of profits and expenses, allocation of and tax responsibility and the order of lien priorities are too rigid for some types of commercial application.

Real estate syndications

In 1972, more than \$1 billion in interstate syndication offerings were filed with the Securities and Exchange Commission, and many additional billions were marketed through private offerings or intrastate sales which were not required to be registered with the Securities and Exchange Commission.

What is a real estate syndication?

The term "real estate syndicate" has no precise legal signification historically. In recent years, the term has come to refer to a specialized form of partnership venture which is structured so as to produce certain tax shelter and other benefits for passive investors whose invested funds are employed to acquire or develop real estate under the management of an experienced partner.

Syndications are most frequently organized in the form of limited partnerships because their characteristics lend themselves most readily to compliance with tax law requirements and other objectives of syndication. The limited partnership is a form of partnership in which one or more partners are *general* partners—i.e., partners who manage the business and who assume unlimited liability, and any number of additional *limited* partners—i.e., partners who do not participate in the management of the business and whose liability is limited to their respective contributions to the partnership capital. The limited partner is essentially a passive investor. If he participates actively in the business, he renders himself liable to creditors as a general partner.

The inherent distinction between a limited partner and a general partner provides a natural and flexible vehicle for achieving a variety of objectives sought by each type of partner. The entrepreneur—the general partner—is able to organize the venture, obtain the funds for the acquisition of the investment property from the limited partners, and manage the enterprise for compensation. He may also take an interest as a limited partner if he so desires. The limited partner has an opportunity to participate in a large or diversified tax-sheltered investment which might not otherwise be available to him, on a limited liability basis and with complete freedom from management responsibilities.

Syndications may embrace either a small number of investors with substantial participation or a large number of investors with relatively small participations, frequently less than \$5,000.

The syndication process

Syndications take a variety of forms. A representative example may take the following form:

The syndicator locates property which has the appropriate economic characteristics to produce the benefits he seeks for himself and for potential investors. After

satisfying himself of the validity of his appraisal and forecasts and the propriety of his proposed tax plan for distribution of income and losses among the partners, he makes a binding commitment for the purchase of the equity in the property, which he later conveys to the syndicate. He formally establishes the syndicate with several joint venturers or associates. The limited partnership is organized under state statutes which are generally based on the Uniform Limited Partnership Act.

Before offering interests to prospective investors, he determines whether he is subject to the requirements of the federal securities laws or state "blue sky" laws regulating the offering of securities or other federal or state law requirements. Depending on the nature of the offering, he solicits investors through a "prospectus," an "offering circular" or similar document which may require registration under federal laws or qualification or other compliance under State law.

The prospectus or circular spells out the nature of the transaction, the anticipated economic and tax benefits, the essential provisions of the partnership agreement, and all other relevant information. It also contains a form inviting investors to join the syndicate as a limited partner.

The partnership agreement covers the essential rights and obligations of the partners, including distribution of profits and losses, assignability of interests, right of withdrawal of capital, causes of dissolution and priorities thereon, management responsibilities and powers of the general partners and the limitations on the liability of limited partners.

The subscriptions of the limited partners supply the minimum cash needed to purchase the equity in the property subject to a mortgage which the syndicator has contracted for, and after assignment by the syndicator of the contract to purchase the property, the syndicate purchases the property.

There are, of course, many variations on the pattern outlined above. The transaction may involve unimproved land with improvements to be erected or in the process of construction. The syndication may embrace several properties. The syndicator may offer interests in undefined properties or may offer an "open-end" investment, allowing for the addition of both new properties and new investors in the syndication in the future.

Tax aspects of limited partnerships

Unlike corporations, which are subject to an income tax, the limited partnership, like all partnerships, pays no income tax as a legal entity. Each partner is taxed individually on the basis of distributed income or loss from the partnership enterprise. The ability of the limited partners to take advantage of losses for tax purposes is a key benefit to the individual investor in real estate syndications. Under Treasury Regulation 1.752-1(e), if the property is acquired subject to a mortgage and neither the partnership nor the partners are personally liable on the mortgage, the basis of each limited partner for his partnership interest includes his prorata share of the partnership mortgage. This increase in basis permits the deductibility of losses generated by depreciation even though it exceeds the partner's cash capital contribution. The Tax Reform Act of 1976, which eliminated this benefit with respect to other forms of tax shelters, did not extend its new provisions in this regard to partnerships, whose principal activity is investing in real estate: Sec. 704(d). This legislation has, however, cut back some of the tax benefits of real estate limited partnerships. See, e.g., the requirement for capitalization and amortization of real property construction period interest and taxes: Secs. 189 and 461(g).

In addition, as an owner of an interest in real estate, the partner is entitled to a tax deduction for mortgage interest payments, real estate taxes and sales taxes, to the extent provided for in the partnership agreement.

Because the limited partnership has a number of characteristics resembling a corporation, the limited partnership agreement must be drawn most carefully to avoid a determination by the Internal Revenue Service that the organization is an association taxable as a corporation.

A "partnership" for tax purposes includes a syndicate or other enumerated forms of unincorporated organizations through or by means of which a business, financial operation or venture is carried on and which is not a corporation, trust or estate for tax purposes. This elliptical definition provides uncertain guidance, particularly since an "association" is taxable as a "corporation." The Internal Revenue Service determines whether an entity is a partnership or an association taxable as a corporation by comparing the entity's characteristics with these characteristics of a corporation, among others: (a) Continuity of life; (b) Centralized management; (c) Limited liability for investors; (d) Free transferability of interests. If the limited partnership has more than two of these characteristics, it will be taxable as a corporation. The process of determining the existence or nonexistence of each of these characteristics is problematical in any given case and must be considered carefully in drafting the partnership agreement. The difficulties in this area are underscored by the recent decision in *Philip G. Larson et al. v. Commissioner of Internal Revenue*, 66 T.C. 159 (1976), where the Tax Court held that a syndication under the California Uniform Partnership Act involving a corporation as sole general partner was taxable as a partnership. An earlier decision (65 T.C. No. 10 (1975)), holding that the syndication was taxable as a corporation, was withdrawn. Because of the difficulty in distinguishing corporations and partnerships on the basis of the above-mentioned four characteristics, the Court invited the service to rewrite its regulations. The IRS has appealed the Tax Court decision to the U.S. Court of Appeals for the Ninth Circuit.

If the activity is taxable as a corporation, it will, of course, be taxed at the corporate level, thus defeating the purpose of the limited partnership. Accordingly, a sponsor of a real estate syndication normally seeks an advance ruling from the Internal Revenue Service to assure that the syndication will have taxable status as a partnership.

Real estate investment trusts

The Real Estate Investment Trust (the "REIT"), is an investment vehicle which is virtually a creature of the federal tax laws. The Internal Revenue Code was amended in 1960 to extend to REITS tax benefits similar to those enjoyed by regulated investment companies. These benefits were granted to permit small investors to participate in large real estate investments and to increase the pool of funds available for equity financing of large real estate developments.

The 1960 amendment as amended through Oct. 4, 1976,¹⁰ contains practically a charter governing the organization and operation of the REIT. In order to qualify under the tax provisions, the REIT:

- (1) Must have been—prior to amendment of Oct. 4, 1976—an unincorporated trust or association.

- (2) Must be managed by one or more trustees or directors.

- (3) Must have transferable shares of ownership. (REIT shares are freely transferable on stock exchanges, like corporate stock; this is generally not true of limited partnership interests because of the tax rules applicable to them.)

¹⁰ Internal Revenue Code, sections 856-858.

(4) Must have at least 100 beneficial owners and five or fewer persons may not own more than 50% of its shares. (There are no such tax limitations on limited partnerships.)

(5) Must be an entity, which would be taxable as a domestic corporation except for the real estate investment trust provisions of the code.

(6) Must make a formal election to be taxed as a REIT.

The REIT must meet prescribed tests on asset values and income sources to insure that its investments are essentially in real estate.

The REIT is not permitted to engage *actively* in the real estate business in the sense of buying and selling real estate, managing real estate developments, or constructing buildings. The tax law provides that it must not hold property primarily for sale to customers in the ordinary course of business, and places rigid limitations on the amount of income which may be generated from the sale of securities or real estate. Its special function is intended to be primarily that of a "passive" investor in real estate interests, deriving its income mainly from rents or mortgage interest or both.

Thus, the REIT cannot even render services to tenants or manage or operate the property in which it invests without endangering its tax status; the income from such services is not includible as "rents from real property" to meet the income source tests prescribed by the tax provision. Such services are required to be handled by an independent contractor from whom the trust does not derive or receive any income.¹¹ For this reason, the REIT usually contracts for the independent services of a real estate manager or participates as a partner in a development with a real estate organization. Under either arrangement, the REIT does not participate in the income attributable to such services.

As generally practiced, the REIT trustees contract for the services of a realty management firm, to advise them on real estate investments, and to act as agent of the Trust in the purchase and sale of real estate, leaseholds, or real estate mortgages, and as an independent contractor in the management of such assets, including negotiations of leases, the collection of rents and mortgage payments, the handling of repairs, arranging for utilities, insurance and other services.

REITS are frequently sponsored by banks, insurance companies, and mortgage finance companies. The earlier REITS were mostly "equity trusts" which invested in income-producing commercial and industrial properties. More recently, the "mortgage trust" has grown in popularity, specializing in either long-term mortgage investments or short-term construction loans or interim mortgage financing.

REITS earn their profit from the spread between the interest they receive from investments and the interest they pay to obtain capital. They thus are sensitive to fluctuations in interest rates, as well as the relative condition of the real estate market and the availability of capital at any given time.¹²

Because REITS are freely traded securities, they are usually registered under the Securities and Exchange Act or the State Blue Sky laws.

The REIT investor is a mutual fund type investor. Unlike the investor in a limited partnership, he is not seeking a specific real estate venture offering tax losses, depreciation benefits or early capital gains, but he expects an above-average dividend income from a freely transferable security which is usually listed on a stock exchange or traded over the counter. Dividends higher than those paid by corpora-

¹¹ Internal Revenue Code, section 856(d)(3).

¹² REITS often borrow from banks on a floating interest-rate basis and then lend it to developers on the same basis. The extraordinary rise in interest rates during 1974 has resulted in a number of defaults in REIT loans, triggering financial difficulties for many REITS.

tions are possible because the qualified REIT entity, unlike a corporation, pays no income tax on income distributed to its beneficial owners and 90% or more of its ordinary taxable income must be distributed in order to maintain its tax qualification.

Numerous REITs have been seriously impacted by the inflation and recession of recent years. They have been subjected to the pressures of mortgage loan defaults, deflated stock market prices for their shares and difficulties in obtaining borrowed funds to meet their commitments. Some REITs have terminated or revoked their status as REITs; others have assigned their assets to financial institutions as collateral for their loans, and many have reduced or suspended dividend payments.

The legal entity which most frequently qualifies for REIT status under the tax laws is the common law business trust. This method of conducting a commercial enterprise originated in Massachusetts to circumvent the need of obtaining a special charter to acquire and develop real estate.¹³ It has thus come to be known as a "Massachusetts Trust." Although it has been recognized as a valid legal entity in most states,¹⁴ some states have passed statutes for the purpose of eliminating uncertainty as to the purposes of the trust, the liability of the trustees and the beneficial owners and the limitations, if any, on its perpetual existence. Accordingly, local law must be considered before employing it as a form of business organization.

Unlike a corporation, the Massachusetts Trust does not normally receive a charter from the State. It is created by a contractual document generally referred to as a "Declaration of Trust," which contains provisions analogous to those covered in a corporate charter. The less permanent regulations, such as those governing the internal management and operation of the trust, are covered by by-laws or a code of regulations. The general legal characteristics of the trust are as follows: (1) legal title to all property belonging to the trust is held by the Trustees as joint tenants; (2) the beneficial owners are *cestuis que trust*; (3) the life of the trust can in effect be perpetual (i.e., until its assets are liquidated and distributed), unless it must be terminated earlier to accommodate state law requirements on the rule against perpetuities; (4) the shares are freely transferable; (5) the beneficial owners are insulated against personal liability, and (6) there is no limitation on the number of beneficial owners unless it seeks to qualify as a REIT (discussed *supra*).

When is real estate a security?

Traditionally, the federal securities laws have dealt with public offerings which involve typical securities, such as corporate stocks, bonds, debentures, etc.¹⁵ Real estate transactions seemed to be a far cry from the reach of the securities laws. But with the explosive growth of real estate syndications and other forms of sophisticated real estate transactions in recent years, recurring litigation has established that the offering to the public of interests in real estate does indeed constitute offerings of securities more often than the conventional wisdom supposed.

One reason why securities law enforcement has been slow to reach interests in real estate is the fact that the federal securities laws make no specific reference to real estate. They do, however, define "security" to include undertakings which are frequently associated with real estate transactions, including "evidence of indebted-

¹³ *State Street Trust Co. v. Hall*, 41 NE 2d 30 (1942).

¹⁴ 156 ALR 54 et seq.

¹⁵ See the Securities Act of 1933, 15 USCA 77 and the Securities Exchange Act of 1934, 15 USCA 78, which provide for a system of disclosure to protect investors against fraud and misrepresentation. A "registration statement" must be filed with the Securities and Exchange Commission for a public offering of a "security" as defined in the Act.

ness," "certificate of interest or participation in any profit-sharing agreement," and "investment contract."

How, then, does one determine when a real estate offering is a "security" offering under the federal securities laws? A three-prong test, laid down by the U. S. Supreme Court in *SEC v. Howey Co.*, 328 U.S. 293 (1946), has provided the basic guideline for determining whether a real estate transaction is an "*investment contract*"—the category of "security" into which most real estate transactions fall. To qualify as an investment contract an arrangement must be a scheme whereby:

- (1) a person invests his money in a common enterprise;
- (2) he is led to expect profits, and
- (3) the expectation of profit is solely from the efforts of the promoter or a third party.

In the *Howey* case, the sale of units in a large Florida citrus grove, coupled with an offer by the developer to cultivate and market the fruit and to remit the net proceeds to the investors, was held to constitute a security offering. Similarly, where the sale of condominium units was coupled with an arrangement whereby the purchasers of the units were to derive a fixed guaranteed annual return from rentals managed by the seller or a third party, the offer was of a security.¹⁶

The *Howey* opinion emphasized the need for flexibility in determining whether "...the countless and variable schemes devised by those who seek the use of money of others on the promise of profits. . ." constitute an "investment contract." This flexibility has resulted in unpredictable application of the *Howey* test.¹⁷

On December 6, 1973, the SEC filed a test case in the Federal Court in San Francisco to compel six corporations, which operate Pajaro Dunes, a 400-unit condominium, to register their offering of units as securities.¹⁸ On March 1, 1974, it issued "Proposed Guide 60, 'Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships,'" ¹⁹ which prescribes certain disclosures which must be made in registration statements.

State "Blue Sky" laws

The solicitation or sale of securities have also been regulated by the various states under the so-called "Blue Sky" laws, which aim at preventing deceit and fraud in the sale of securities. All the States have enacted laws of this kind and 31 States have adopted, with or without modifications, the Uniform Securities Act as approved by the National Conference of Commissioners on Uniform State laws on August 25, 1956.

¹⁶ *SEC v. Marasol Properties*,—F. Supp.—(DC 1973); *Kahn v. Kaskel*, 367 F. Supp. 784 (1973).

¹⁷ See, *Nash & Associates, Inc. v. LUM'S of Ohio, Inc.*, 484 F.2d 393 (6th Cir. 1973). The trend is increasingly toward holding real estate investment offerings to be "securities." E.g., "Co-op offerings" are both "stock" and "investment contracts" within the Securities Act of 1933; *1050 Tenants Corp. et al v. Jakobsen et al*, 365 F. Supp. 1171 (S.D. N.Y. 1973), July 8, 1974, affirmed, 503 F.2d 1375 (1975); *owners of S W 8 Real Estate v. McQuaid*, 513 F. 2d 558 (CA 9) (1975). There must be an expectation of profit, however. Thus, a state subsidized and supervised nonprofit housing co-op does not offer "securities"; tax benefits, reduced rental and benefits from the leasing of commercial facilities do not constitute an expectation or profit per se: *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975), reversing *Forman v. Community Services*, 500 F.2 1246 (CA 2) (1974). See, also, *Grenader v. Spitz*, 537 F.2 612 (CA 2) (1975); *AMR Realty Co. v. State Bureau of Securities*, 373 A.2d 1002 (Super. Ct., N.J., App. Div.) (1977).

¹⁸ *SEC v. Hare, Brewer & Kelley, Inc., et al.*, SEC Docket, Vol. 3, No. 5, Dec. 18, 1973.

¹⁹ SEC Release Nos. 4936 and 33-5465; Exchange Act Release No. 34-10663, March 1, 1974, 39 F.R. 10278.

Offerings of real estate interests may fall within the purview of either federal or state securities regulation or both. As in the case of the federal securities laws, the trend has been in the direction of bringing transactions involving real estate interests within the scope of State Blue Sky regulation. As recently as 1970, State courts held uniformly that shares of cooperative housing corporations were not securities. Since that date, Courts have treated such shares as securities within the meaning of State laws. Specific legislation, moreover, has been adopted by some States regulating the sale of certain forms of interests in real estate.

The Interstate Land Sales Full Disclosure Act²⁰

The Interstate Land Sales Full Disclosure Act regulates the interstate sale or lease by developers of fifty or more unimproved lots in subdivisions as part of a common promotional plan. When such sales are direct sales of real estate, they would not normally fall within the protection of securities laws. This Act therefore provides a method of registration with the Department of Housing & Urban Development ("HUD") which is analagous to registrations under the Securities Act. No such lot may be sold or leased unless a "statement of record" containing detailed information concerning the property and the plan is filed with HUD and is in effect,²¹ and a "printed property report" containing essentially the contents of the "statement of record" is furnished to the purchaser of any lot. Severe penalties, both civil and criminal, are prescribed for violation of the registration requirements or for the use of fraudulent or deceptive practices or material misrepresentations in selling or leasing lots in subdivisions subject to the provisions of the Act.^{21(a)}

The Act provides the following exemptions from the Act's registration requirements, among others:

- a) the plan offers less than 50 lots or lots consisting of at least five acres each;
- b) the lots contain an existing building on improved land or the seller is obligated to erect such a building within two years;
- c) the lots are purchased for the purpose of constructing residential, commercial or industrial buildings by a professional builder, or
- d) the lot is free and clear of all liens and encumbrances at the time of the sale and the purchaser has personally inspected the property.

The office of Interstate Land Sales Registration of HUD had adopted elaborate regulations pursuant to the Act.²² Among other disclosures, the developer must provide audited financial statements, reports on environmental factors including unusual conditions affecting habitability, assurances on his commitments to provide promised improvements and the availability of utilities and sewerage facilities.

In order to lighten the burden of developers with limited resources, the agency has provided a "Limited Offering—Intrastate Exemption" for subdivisions which contain less than 300 lots and which are offered and advertised intrastate to resi-

²⁰ 15 USC 1701 et seq, Pub. L. 90-448, August 1, 1968, effective April 28, 1969.

²¹ The effective date is the thirtieth day after filing or such earlier date as the Secretary of HUD shall determine.

^{21(a)} See Gladys Husted v. AMREP Corp., et al., 429 F. Supp. 298 (S.D. N.Y. 1977) for interpretation of various key provisions of the ILSFDA. This case holds that intent to deceive or defraud is not an element of suit, nor is there need to prove reliance, in order to recover under S. 1709(a) of the Act (which relates to the filing of the "Statement of Record") or under S. 1709(b)(2) (which authorizes suit against a developer, or his agent, "who sells or leases a lot. . . by means of a property report which contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein"). See, also, Bryan v. AMREP Corp. 429 F. Supp. 313 (S.D. N.Y. 1977) for class action involving ILSFD.

²² 24 CFR 1700, 1976.

dents of the State where the subdivision is located (except that 5% or less of sales in any one year may be made to residents of another state). Qualification for this exemption, however, must be granted expressly by HUD.

The HUD Regulations also extend to condominium sales, but most such sales will probably escape the registration requirement because of the exemption applying to sellers who are obligated to erect completed units within two years from the date the purchaser signs the sales contract.

The Secretary of HUD may determine that filings with designated state authorities may be accepted as meeting the requirements of the Act.

Questions on Condominiums and Cooperatives

Multiple Choice

(Answers to this section are on page 714.)

1. Title to units in both a condominium and in a cooperative housing development is vested
 - (a) in a corporation owning the building.
 - (b) in an association owning the building.
 - (c) the owner of each unit.
 - (d) the unit owner of a condominium; the corporate owner of a cooperative.
2. Cooperative housing developments are usually organized
 - (a) under State business corporation laws.
 - (b) under special State statutes governing creation of cooperatives.
 - (c) under federal tax laws.
3. A "condominium declaration" is
 - (a) a sworn statement by the unit owner that he will comply with rules and regulations of the condominium.
 - (b) an agreement of the unit owners governing the operation of the common elements of the condominium.
 - (c) the "charter" of the condominium established upon its filing with local state authorities.
4. The proprietary interest of a cooperative tenant-stockholder is
 - (a) real estate for all purposes.
 - (b) personal property for all purposes.
 - (c) realty for some purposes, personalty for other purposes.
5. First mortgages are obtainable in most States
 - (a) by the owner of a condominium unit.
 - (b) by the tenant-shareholder of a cooperative.
 - (c) by either the condominium owner or coop tenant-shareholder.
6. Upon default in payment of real estate taxes by a condominium unit owner
 - (a) the taxing authority can levy on the entire condominium.
 - (b) title to the unit which he owns can be foreclosed.
 - (c) the taxing authority must look first to his unit for satisfaction of the debt, then the assets of the condominium.
7. Under the federal income tax laws, mortgage interest and real estate taxes are deductible
 - (a) by a condominium unit owner but not by a coop tenant-shareholder.
 - (b) by a coop tenant-shareholder but not by a condominium unit owner.
 - (c) by neither.
 - (d) by both.
8. Taxes levied on the individual units of a condominium are the responsibility of
 - I. the management association.
 - II. the occupant under a lease.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.

- (d) neither I nor II.
- 9. Which one of the following does not apply to condominium ownership?
 - (a) Ownership of stock in a corporation.
 - (b) Common ownership in swimming pool.
 - (c) Fee simple title to unit.
 - (d) Mortgage liability as to single unit.
- 10. A Florida developer attempted to create a separate unit of individual ownership designated as "recreation unit" or "recreation hall," claiming that such unit was a portion of the common elements, belonging to each unit owner in the condominium. Under these facts,
 - I. the unit owner will win suit, since this unit was part of the common elements.
 - II. the developer will win, but must refund part of the purchase price to the unit plaintiff.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 11. Jacobs, owner of a condominium unit, brought suit against Krig for a declaratory judgment, challenging the validity of a regulation prohibiting the keeping of animals in condominium units. Decide.
 - I. The plaintiff will win.
 - II. The prohibition of animals must be by a by-law, and not by a rule or regulation.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 12. Responsibility for taxes levied on the common elements is that of
 - I. the individual unit owner.
 - II. the management association.
 - (a) I only.
 - (b) II only.
 - (c) both I and II.
 - (d) neither I nor II.
- 13. In a condominium, the unit owner has a
 - (a) fee simple title.
 - (b) base fee title.
 - (c) joint estate, with other unit owners.
 - (d) lease in perpetuity.

Questions on real estate syndications

- 1. Real estate syndications are usually organized as
 - (a) business corporations
 - (b) limited partnerships.
 - (c) non-profit corporations.
 - (d) trusts.
- 2. A basic difference between a general partner and a limited partner is
 - (a) determined by the amount of capital each contributes.
 - (b) that the general partner manages the enterprise and the limited partner contributes capital and does not participate in the management of the partnership.
 - (c) that the general partner is liable for the debts of the partnership only if the limited partner fails to discharge the partnership debts.
- 3. Under the federal income tax laws, limited partnerships
 - (a) are taxed like corporations.
 - (b) are taxed like associations.
 - (c) are not taxed as an entity.

4. Under the federal income tax laws, a limited partner
 - (a) cannot take advantage of losses for tax purposes.
 - (b) includes his pro rata share of a partnership mortgage in his tax basis.
 - (c) is not entitled to a tax deduction for mortgage interest payments and real estate taxes.
5. In order to qualify under the federal tax laws, a limited partnership
 - (a) must have perpetual existence.
 - (b) must have interests which are freely transferable.
 - (c) must have centralized management.
 - (d) must provide limited liability for investors.
 - (e) must not have more than two of the above characteristics.
6. The Tax Reform Act of 1976:
 - (a) eliminated all the tax shelter benefits of real estate limited partnerships.
 - (b) no longer permits a limited partner to include his pro rata share of the partnership mortgage as part of his tax basis.
 - (c) has changed the treatment with respect to deductibility of construction period interest and taxes.

Questions on real estate investment trusts

1. Mortgage trusts differ from equity trusts in that
 - (a) a mortgage trust is a Massachusetts trust.
 - (b) an equity trust is a regulated investment company.
 - (c) each invests in different types of real estate interests.
2. Under the federal tax laws, a real estate investment trust
 - (a) must engage actively in the real estate business.
 - (b) is a passive investor in real estate interests.
 - (c) must manage property in which it invests and render all services to tenants of property it manages.
3. The Massachusetts Trust
 - (a) is a legal entity which is recognized in Massachusetts only.
 - (b) is the form of organization which is most frequently used to qualify for real estate investment trust status under the tax laws.
 - (c) is recognized by all States as a common law form of legal organization which provides limited liability to investors and free transferability of shares.
4. Under the federal tax laws, a real estate investment trust
 - (a) must be organized as a corporation.
 - (b) must be organized as a limited partnership.
 - (c) must be limited in size to 100 beneficial owners.
 - (d) must have freely transferable shares of ownership.
5. In a Massachusetts Trust, legal title to all property belonging to the trust is vested
 - (a) in the beneficial owners.
 - (b) in the trustees.
 - (c) in a limited partnership established by the trust.

Questions on real estate as securities

1. The federal securities laws regulate
 - (a) the sale of all stocks, bonds and other corporate securities.
 - (b) syndications and real estate sales only.
 - (c) the sale of U.S. Savings Bonds and other federal securities.
 - (d) public offerings of securities.
2. The sale of interests in real estate is the sale of a security
 - (a) if it is offered to the public generally.
 - (b) if it is an investment contract.
 - (c) if it is sold on a stock exchange.
3. When a public offering of a real estate security must be registered under federal law,

- the "Registration Statement" is filed with
- (a) the SEC.
 - (b) H.U.D.
 - (c) F.H.A.
 - (d) the Lands Division of the Department of Justice.
4. The "Blue Sky" Laws are:
- (a) federal laws regulating the sale of securities.
 - (b) state laws regulating high-rise buildings.
 - (c) interstate land sales full disclosure regulations.
 - (d) none of the above.

Questions on interstate land sales full disclosure act ("The Act")

1. The Act regulates
 - (a) all interstate real estate transactions.
 - (b) the sale or lease of unimproved lots in subdivisions as part of a promotional plan.
 - (c) cooperative and condominium sales.
 - (d) the sale of real estate through the mail.
2. The Act, where otherwise applicable, does not apply
 - (a) if less than 50 unimproved lots are involved in a promotional plan.
 - (b) if the sale is registered with the SEC.
 - (c) if the sale is registered under the "Blue Sky laws."
 - (d) if it falls within the "Limited Offering—Intrastate Exemption."
3. A "Statement of Record," where required by the Act, is
 - (a) filed with the SEC.
 - (b) filed with HUD.
 - (c) furnished to the purchasers of lots sold in promotional plans subject to the Act.
4. A plaintiff, to recover against a developer, under the Act, for misrepresentation or omission of a material fact in the statement of record or in the property report, must establish that the defendant:
 - (a) intended to deceive or defraud him and that he relied on such document(s).
 - (b) was negligent.
 - (c) actually made a material misrepresentation or omission of a fact required to be stated therein.
 - (d) had "scienter" (knowledge) of the misrepresentation.

FILL IN, MATCHING, AND KEY-WORD QUESTIONS

1. To determine the rate of interest, divide the amount of interest for one year by the amount of *principal*.
2. To ascertain the market value of a property, divide the *net income* by the annual rate of return.
3. After the economic life of an apartment building has been exhausted, the owner has left the *residual* value.
4. The largest division of real property, including lands and tenements, is *hereditaments*.
5. The Federal Open Housing Law was passed by Congress in 1968.
6. The first act of Congress forbidding racial discrimination was passed in 1866.
7. A recorded deed gives the public *constructive* notice.
8. A permit allowed by a Zoning Board in violation of the city ordinance is a *variation*.
9. The area of a tract of land is obtained by multiplying the frontage by the *depth*.
10. Violation of the license law permits the Real Estate Commission to cite the licensee for a *formal hearing*.
11. A deed outside the claim of title that relates to the subject property, is known as a *wild deed*.
12. A broker's relationship to the owner is that of a *fiduciary*.
13. A grantor who desires to limit personal liability, will give the grantee a *special warranty deed*.
14. A trustee, in giving a deed for property in a trust estate, will execute a *special warranty deed*.
15. In order for a grantor to give a special warranty deed to the grantee, a provision to that effect must be stated in the *agreement of sale*.
16. The authority of a municipality to enact zoning ordinances is a delegation of power from the *legislature*.
17. A by-law of a corporation, in excess of its charter powers, is *ultra vires*.
18. Depreciation usually found in older type buildings, which affects the appraiser's estimate of value, is known as *obsolescence*.
19. A contract obtained through fraud or misrepresentation would be *void*.
20. The gradual increase in the value of real property is called *appreciation*.
21. P.I.T.I. means principal, interest, taxes and *insurance*.
22. Property held under a lease is called a *leasehold*.
23. Where a licensee violates a rule or regulation of the Real Estate Commission, he will be charged with *improper conduct, bad faith, untrustworthiness, dishonesty, or incompetency*.
24. In the preparation of a closing statement, a mortgage assumed by the buyer would be listed as a *credit* to the buyer and as a *debit* to the seller.
25. The amount of earnest money to be paid is determined by *agreement of parties*.
26. A purchaser at a foreclosure sale upon a mortgage receives a *sheriff's deed*.
27. Real estate taxes are usually computed on the basis of the *calendar* year.
28. Where a material misrepresentation has been made to a buyer, he is entitled to relief in court in an action for *rescission*.
29. Community property may only be acquired by *husband and wife*.

30. Unproductive land on which the cost of production approximates the gross return is *marginal* land.
31. A contract for purchase of real estate upon an installment basis wherein the deed is delivered to the purchaser upon payment of the last installment, is called a *land contract*.
32. A plan or map of a certain piece or pieces of land is a *plat*.
33. A real estate license may be revoked for making any substantial *misrepresentation*.
34. A real estate broker's license must at all times be conspicuously displayed at *office* (except in California).
35. Unpaid taxes on real property become a *lien*.
36. When a real estate salesman is discharged for dishonesty, the broker must immediately notify the *Real Estate Commission*.
37. Failure to prosecute one's legal rights promptly constitutes *laches*.
38. *Economic obsolescence* is the loss in value to causes external to the property.
39. The formula for determining the square foot area of a tract of land is by *multiplying* the width by the depth.
40. By multiplying the width of a dwelling by its length by its height, you obtain its *cubage*.
41. Mechanics' liens are usually filed against real property for payment of *labor or materials*.
42. An unlicensed salesperson negotiated the sale of a parcel of real estate. Both broker and salesperson claimed the commission. It is payable to *neither*.
43. Before suspending or revoking any license, the Real Estate Commission must grant the licensee a *hearing*.
44. An estimate of value of real estate by a qualified expert is called an *appraisal*.
45. The loan secured by a mortgage is evidenced by a *note*.
46. A salesman in the employ of a real estate broker negotiated a deal. In order to collect his commission, an action may be brought against the seller by the *broker*.
47. A real estate salesman must lead a prospect through the following five steps before the prospect buys—(1) desire, (2) action, (3) belief, (4) attention, (5) interest. Rearranged in proper sequence they would be—*attention, interest, belief, desire, action*.
48. When specific properties are benefited by public improvements, the charges (or taxes levied) to pay for such improvements are called *assessments*.
49. A deed without warranties is a *quit claim deed*.
50. The two types of property are called *real* and *personal*.
51. The spouse of a married titleholder of a home should sign a sales contract and deed to relinquish or release *dower* or *curtesy* rights.
52. A contract secured through fraud or misrepresentation would not be *valid*.
53. The amount of commission to be charged in a real estate transaction is determined by *agreement between owner and broker*.
54. The overhang or projection of a foundation wall, a porch, or a balcony beyond the established line of a parcel of land is known as an *encroachment*.
55. To make a binding contract there must be at least *two* parties.
56. An acquired privilege or right of use or enjoyment falling short of ownership which one may have in the land of another is known as an *easement*.
57. If a person owns a part interest in a home he is buying on time, such interest is called an *equity*.
58. A right of the state by which the state can obtain possession of any property which is needed for a public purpose is *eminent domain*.
59. Ordinarily the length of time a listing contract remains in force is determined by *contract*.
60. Mud tubes or shelter channels on walls or joists or cellar window sills apparently rotted indicate the presence of *termites*.
61. Title to chattels is usually transferred by a *bill of sale*.
62. The compiled ordinances or laws regulating the construction of buildings within the jurisdiction of a municipality are called the *zoning and building code*.
63. The branch of the state government that is responsible for the enforcement of the real

- estate broker's license law is the *Real Estate Commission* (or State Real Estate Board).
64. If a witness is served with a summons to appear before the Real Estate Commission, such summons is called a *subpoena*.
 65. If we multiply the floor area of a building by its height, we arrive at a figure designated as its *cubage*.
 66. A mortgage given for a part of the purchase price of a home is called a *purchase money mortgage*.
 67. A note is negotiated by the signature of the holder on its "reverse." This is called an *endorsement*.
 68. The name of the instrument by which personal property is ordinarily mortgaged is a *chattel mortgage*.
 69. The instrument which is used to convey title to real property is called a *deed*.
 70. A small supporting column for a hand rail is called a *balustrade*.
 71. A *canopy* is an ornamental roof projection over a door or window.
 72. When hot air is forced through the heating ducts, by a blower, it is known as *forced air heating*.
 73. The instrument which is used to convey title to personal property is called a *bill of sale*.
 74. The fixing of value of real estate for purposes of taxation is called *assessing*.
 75. The right to cross over property belonging to another is called an *easement*.
 76. A commission agreement between licensed brokers or salesmen need not be *written*.
 77. The moral duty and the principles of right action and fair dealing set forth for the guidance of professional conduct are known as *canons of ethics* or *code of ethics*.
 78. A careful measurement made by a qualified person from established data to determine the boundaries of a tract of land is known as *surveying*.
 79. The board skirting the walls of a room on the floor line is called *baseboard*, *quarter round*.
 80. The lowest floor level in a building is the *basement floor*.
 81. *Foundation* is the walls of a building below the first or ground floor.
 82. One who assigns or transfers personal property is called an *assignor*.
 83. In a deed there must be good or valuable *consideration*.
 84. An authorization given by one person to act for him on his behalf is called a *power of attorney*.
 85. The rights which a wife has upon her husband's death in lands owned by him in fee simple are called *dower*.
 86. The element of depreciation usually found in older type buildings and which affects the appraised value is known as *obsolescence*.
 87. Applications for a real estate license are made to the *Real Estate Commission* (or Commissioner).
 88. A marginal release or a satisfaction is often used to release a *mortgage*.
 89. The cestui que trust under a trust instrument is the *beneficiary*.
 90. A note is usually given to secure the payment of a *mortgage*.
 91. Where a broker holds a written listing protecting him against a sale by the owner or another broker during a limited period of time it is an *exclusive-right-to-sell contract*.
 92. Deeds are usually acknowledged before a *notary public*.
 93. Where a mortgagee cannot personally be present to satisfy a mortgage, the writing which may be filed for that purpose is called a *satisfaction piece*.
 94. An agreement between two or more parties to do or not to do a certain thing is called a *contract*.
 95. The instrument which the purchaser of a mortgage should obtain from the mortgagor is known as an *estoppel certificate* (also known as a certificate of no defense or a declaration of no setoff).
 96. The clause in a deed which permits the buyer to proceed against the seller for damages due to a defect in title is the *warranty clause*.
 97. The parties to a lease are known as *lessor* and *lessee*.
 98. A real estate salesperson must be in the employ of a broker who is properly *licensed*.

99. A common unit other than the square foot which is used in determining the value of developed land is the *front foot*.
100. A summary of the most important part of all instruments comprising the recorded title of the seller, arranged in chronological order, is an *abstract of title*.
101. The system of recording used to eliminate tedious and expensive searches of titles is the *Torrens system*.
102. A land contract is synonymous with a *contract for deed*.
103. The rule of law in leasing or selling property where the parties deal "at arm's length" is called *caveat emptor* (let the purchaser beware).
104. A lease is transferred by the lessor to a purchaser of the leased property by *assignment*.
105. The public regulation of the character and intensity of use of real property through the employment of police power is known as *zoning*.
106. Real estate license laws are constitutional because they represent a valid exercise of the state's *police power*.
107. A decree of court determining that one individual is indebted to another and fixing the amount of the indebtedness is called a *judgment*.
108. Title to property occupied in defiance of the real owner for a long period of time may pass to the occupier through *adverse possession*.
109. In order to prevent the proposed violation of a building restriction covenant an action should be brought for an *injunction*.
110. A person who belongs to a local real estate board affiliated with the National Association of Realtors is a *Realtor*.
111. The compensation or income received for the use of real property is known as *rent*.
112. A limitation upon the use or occupancy of real estate placed by public legislative action is known as *zoning*.
113. Where one is negligent in asserting his legal rights, his claim may be barred by a *statute of limitations*.
114. One who institutes a suit at law is *the plaintiff*.
115. The interest or value of an estate remaining to the mortgagor over and above the encumbrance is known as *his equity*.
116. An agreement between two persons which creates a legal obligation is called a *contract*.
117. The conveyance of an estate in land by way of a pledge for the security of a debt, to become void upon payment of the debt, is called a *mortgage*.
118. A deed which purports merely to convey whatever interest in the particular land the grantor may have, excluding any implication that the grantor has a good title or any title, is known as a *quit claim deed*.
119. A person who receives real estate under a will is known as the *devisee*.
120. The person appointed to administer the estate of a decedent who did not leave a will is called an *administrator*.
121. The person named in a will to administer the estate is the *executor*.
122. *Percolation test* is a soil test to determine if the soil will take sufficient water seepage for use of septic tanks.
123. A private sewage disposal facility for individual homes is a *septic* (cess pool) system.
124. The person to whom real estate is conveyed by deed is the *grantee*.
125. The person to whom personal property is sold is the *vendee*.
126. Where a deed is delivered to a third person pending the performance of some condition, it is a delivery *in escrow*.
127. The owner's right to buy back property sold for delinquent taxes is called the right of *redemption*.
128. Joint tenancy implies the right of *survivorship*.
129. A chattel mortgage is given to obtain a *loan*.
130. The trade name of a business sold usually includes the *good will*.
131. A broker occupies a *fiduciary* relationship to his principal.
132. A person who holds an option for the purchase of real estate is the *optionee*.
133. The transfer of interest in a bond, mortgage, lease or other instrument is called *assign-*

ment.

134. Dispossession of a tenant by a landlord from a leased property is known as *eviction*.
135. A forged deed is always *void*.
136. A sub-lessee who, in turn, sub-lets to another is said to hold a *sandwich lease*.
137. Generally speaking, a person can afford to pay $2\frac{1}{2}$ times his annual income for a home.
138. In the absence of a specific agreement as to commission, the amount to be paid is determined by *agreement of the parties*.
139. Where one holds property absolutely to himself and his heirs forever, he is said to own the property in *fee simple*.
140. An absolute conveyance of property would be by *fee simple deed*.
141. Title to real estate passes to the grantee at the time the deed is *delivered*.
142. Two or more persons may own real estate as *tenants in common*.
143. A freehold that is limited to end with a life of the person to whom it is granted is a *life estate*.
144. A written instrument legally sufficient to transfer an estate of freehold from one person to another is a *deed*.
145. Real estate given to a person by will is known as a *devise*.
146. Stamps due on a deed are paid by the *seller*, if there is no agreement otherwise.
147. The statute which requires certain contracts relating to real estate to be in writing is the *Statute of Frauds*.
148. Where a mortgagee requires a tenant of leased premises to pay the rent to him because the mortgage is in default, he is said to be a *mortgagee in possession*.
149. An initial payment made by a possible purchaser of real estate to bind him to the terms of his offer to purchase is called *earnest money* (also known as a down payment; hand money).
150. An agent's authority to execute a binding agreement of sale for an owner must be *written*.
151. An agreement granting the exclusive right to purchase real estate for a limited period of time is known as an *option*.
152. When a tenant in common dies, his interest *goes to his heirs*.
153. *Title* is evidence of ownership in real estate.
154. *Escheat* occurs when there are no heirs to inherit property.
155. A contract between two or more parties for the use of property for consideration is known as a *lease*.
156. The main characteristic which distinguishes a lease from a license is *rent*.
157. The action of a landlord in levying upon a tenant's goods for rent in arrears is known as *distrain*.
158. A salesperson must be recommended by a *broker*.
159. Funds held by a broker, belonging to others, must be kept in a *trust account*.
160. Charging more than the legal rate of interest is *usury*.
161. A written instrument which transfers possession of property, but does not transfer ownership, is a *lease*.
162. A salesperson in the employ of a broker put through a sale. The seller refused to pay the commission due. In order to collect, suit may be brought against the seller by the *broker*.
163. A person who acts as a real estate broker without a license is guilty of a *misdemeanor*.
164. In the event a tenant defaults in rent payments, the landlord may start an action for *distrain*.
165. If the buyer insisted that title should close upon the exact date agreed upon, the clause which should be inserted in the agreement is that time is of *the essence*.
166. The action to compel the seller to execute a deed in pursuance of a written agreement is an action for *specific performance*.
167. A owns a $\frac{1}{3}$ interest in land. B owns a $\frac{2}{3}$ interest. They own the land as tenants *in common*.

168. A single mortgage which covers more than one property is a *blanket mortgage*.
169. The transfer of all of a tenant's rights and interest under a lease to another is known as an *assignment*.
170. When a commercial property is being offered for sale, and a tenant wishes to renew a long-term lease, the managing broker should renew the lease with a *first right of refusal*.
171. The amount of commission to be paid a broker in a real estate deal is fixed by *agreement of parties*.
172. A lien given by the statute to those who perform work or furnish materials in the improvement of real estate is called a *mechanic's lien*.
173. The general term covering loss from any cause is called *depreciation*.
174. A measure of land consisting of 43,560 square feet is called an *acre*.
175. Where each person is possessed of the whole of an undivided part, he is a *tenant in common*.
176. A warranty deed is used in connection with the sale of *real estate*.
177. The delivery of a warranty deed usually passes *title*.
178. A broker should not act as such in selling real estate in which he has an undisclosed *interest*.
179. The section of land located in the extreme southeast corner of a township is number *36*.
180. In some states a mortgage is known as a *deed of trust*.
181. A loan not guaranteed by some governmental agency is called a *conventional* loan.
182. One who seeks to obtain leads and tips on listings and sales is known in the trade as a "*bird dog*."
183. The license law is the greatest single factor in elevating the real estate business to a *profession*.
184. A clause in a mortgage which gives the mortgagor the privilege of paying the mortgage indebtedness before it becomes due is called *pre-payment mortgage*.
185. The covenant which makes it mandatory that the seller execute any additional instruments necessary to perfect the title at any future date is called the covenant of *further assurance*.
186. A lease which requires the tenant to pay all expenses of the property in addition to his rent is called *net lease*.
187. A real estate broker drew a lease providing that the rent was to be paid *monthly*, but did not specify therein that rent should be paid in advance. In such a case, the rent is due and payable on *the last day of the month*.
188. An authorization is made in New York State for the sale of land located in New Jersey; such authorization is enforceable in accordance with the laws of *New York*.
189. In the absence of an agreement between a real estate broker and his client as to commission, the commission is determined by *the prevailing rate*.
190. A mortgage is in default for non-payment of *interest or principal*.
191. In order to recover his debt, the mortgagee should institute *foreclosure* proceedings.
192. An automatic water pump used in basements to raise water to the sewer level is called a *sump pump*.
193. The Director of the license law is usually appointed by the *Real Estate Commission*.
194. A mortgage may be satisfied by payment of *foreclosure*.
195. The mortgage covenant which permits the mortgagee to advance the due date of the principal is called the *acceleration clause*.
196. Paying off a mortgage loan by regular monthly payments over an extended period of time is known as *amortization*.
197. A salesperson's license pocket card should be carried with him or her as an *identification* to prospects.
198. A chattel mortgage is given to secure a loan on *personal property*.
199. A person who is the beneficiary under a trust of a decedent is the *cestui que trust*.
200. The relationship which results when a person transfers legal title to a property to be held for the benefit of another person is a *trustee* relationship.

201. That which belongs to something else, which passes as an incident to land, such as a right of way, is called an *appurtenance*.
202. An owner who gives an option on a property is the *optionor*.
203. Where the mortgagor is in default, the mortgagee may *foreclose*.
204. The legal compensation for the use of money is *interest*.
205. One who executes a will is called the *testator*.
206. Upon the death of the testator, the will is *probated*.
207. Commission disputes between a broker and a salesman should be determined *in court*.
208. That part of the real estate instrument which identifies the subject property is called the *description*.
209. A legal document, filed in the office of the county clerk, giving notice that a court action is pending, affecting the property, is called *lis pendens*.
210. An individual who holds an option on a property is called an *optionee*.
211. A note is negotiated by an *endorsement*.
212. A freehold that is limited to end with the life of the person to whom it is granted is called a *life estate*.
213. A certificate of no defense is generally required, upon a transfer of the mortgage, from the *mortgagor*.
214. One who receives title under a deed is called the *grantee*.
215. The Canons by which a Realtor is governed are called the *Code of Ethics*.
216. An oral contract for the conveyance of land is unenforceable under the *Statute of Frauds*.
217. An authorization to sell real estate must be signed by the *owner*.
218. A wife's rights in her husband's property until his death are *inchoate*.
219. A *canopy* is an ornamental roof projection over a door or window.
220. The person against whom an appeal is taken in court is the *appellee*.
221. The principal element in adverse possession is *occupancy*.
222. *Foundation* is the walls of a building below the first or ground floor.
223. A roof having the same pitch on all four sides is called a *hip roof*.
224. An encroachment is a *trespass*.
225. One who has the actual possession of a mortgaged premises is a *terre tenant*.
226. An ornamental projection at the top of a wall is called a *parapet*.
227. The normal cost of exact duplication of a property, as of a certain date, is called *reproduction* cost.
228. Wood or metal members upon which the flooring rests are called *joists*.
229. Wood or metal members between the above and designed to reinforce them are called *bridging*.
230. The roof rests upon lateral members called *rafters*.
231. Vertical members to which the lath is attached are called *studs*.
232. The above rest upon a horizontal member called a *sill*.
233. A domed turret with lateral openings in a roof is called *louver*.
234. The base framing of a window opening is the *window sill*.
235. A protruding gable on a neighbor's land is an *encroachment*.
236. An article may be changed from real estate to personalty by *detachment* or severance.
237. Generally, when looking at a map, the direction on your left will be the *west*.
238. The Federal Agency which insures a V.A. loan is the *Veterans Administration*.
239. An escrow or trust account required by law is for the protection of the *public*.
240. An important asset of a business, which is carried on the owner's books at a nominal value, is *good will*.
241. Bringing down an abstract to date is usually charged to the *seller*.
242. An increase in the value of property due to economic or related causes is known as *appreciation*.
243. A buyer should seek advice as to the meaning of terms in a contract from an *attorney*.
244. Under the law of agency, a broker is considered a *fiduciary*.
245. The person who becomes the owner of real estate upon the death of the present owner

- is called the *remainderman*.
246. Where a person inherits property from an adverse claimant, his adverse possession is connected through *tacking*.
 247. Where one purchases property from a party who has adversely occupied it for seven years, there is *privity of contract*.
 248. In the transfer of real estate, the signature of *the grantee* is not necessary on the deed.
 249. The Housing Act prohibiting discrimination in the sale and rental of real estate was passed in 1968.
 250. A person who becomes the owner of real estate by will is called the *devisee*.
 251. A person who becomes the owner of personal property by will is called the *legatee*.
 252. A contract which transfers possession of property for a consideration is a *lease*.
 253. Where each part owns an undivided part of the whole, it is a *joint tenancy*.
 254. An *acceleration* clause in a mortgage advances the maturity date.
 255. A person who takes title to real estate from a life tenant is a *tenant per autre vie*.
 256. The contract of a minor is voidable by him until he attains his *majority*.
 257. In law, a minor is also known as an *infant*.
 258. A vendor in an agreement of sale corresponds to the *grantor* in a deed.
 259. A deed is acknowledged so that it may be *recorded*.
 260. An agreement under which an owner, for a consideration, withholds his property from the open market is called an *option*.
 261. The down payment made by a buyer as evidence of good faith is called *earnest money* (hand money).
 262. When the offer to purchase or land contract becomes binding, the buyer is known as the *vendee*.
 263. Matters which a title company will not insure against are known as *encumbrances*.
 264. A commission determined by what the services are worth is on a *quantum meruit* basis.
 265. In lieu of an abstract, the seller could furnish the buyer *title* insurance.
 266. The rules of the Commission must be consistent with the *provisions of the license law*.
 267. Survivorship is an attribute of *joint tenancy*.
 268. Giving approval by act or conduct of something done by another, without authority, is called *ratification*.
 269. A certificate showing the balance due on a mortgage at the time of closing a sale is a *reduction* certificate.
 270. A unit of land measurement, 66 feet, is a *chain*.
 271. The satisfaction of enjoyable living, due to the character of the neighborhood, is known as *amenities*.
 272. The new name of the National Association of Real Estate Boards is *National Association of Realtors*.
 273. The contour and slope of land is known as *topography*.
 274. A broker, being a partner in purchase of a property, is said to take "*a piece of the action*."
 275. An owner cannot terminate a broker's employment, if the broker has an agency *coupled with an interest*.
 276. An exclusive agency must have a *definite* expiration date.
 277. A lease calling for step-by-step rent increases is a *graduated* lease.
 278. A tax on real estate according to its value is *ad valorem* tax.

Key Word Questions—True and False

(If false, give correct answer.)

1. An article may be changed from real estate to personalty by *attachment*.
A. Detachment
2. The surrender of some claim, right or privilege is termed a *set-back*.
A. Waiver

3. Title to vacant land may be transferred by an *agreement of sale*.
A. Deed
4. The annual percentage rate of return on a property investment is termed by an appraiser as the *value*.
A. Yield
5. Unpaid taxes on a property become a *default* against the property.
A. Lien (encumbrance)
6. Evidence of ownership in real estate is vested in the *title*.
A. True
7. A buyer generally pays for the *continuation* of the abstract of title.
A. Examination.
8. When a transaction is closed, the seller becomes the *grantee*.
A. Grantor
9. A section of land located in the extreme southeast corner of a township is number 32.
A. 36
10. The term *obsolescence*, in appraising, means loss in value of real property, due to ordinary wear and tear.
A. Depreciation
11. A lease given by a tenant is called a *re-lease*.
A. Sub-lease
12. A *freehold* is an estate held under a lease.
A. Leasehold
13. A person who lists his property for sale with another is known as the *agent*.
A. The principal
14. A listing contract which authorizes a broker to sign a contract of sale for his owner is *unusual*.
A. True
15. A *straight fee* may be paid by a broker to an unlicensed person who only submits listings.
A. Nothing
16. The *Home Owners Loan Corporation* is the Federal Agency most in demand in financing home purchases.
A. Federal Housing Administration
17. The vendor of real property becomes *the grantee* in the instrument of conveyance.
A. Grantor
18. An agreement, under which an owner keeps his property off the market for a consideration, is known as an *exclusive listing*.
A. Option
19. A mortgage is considered satisfied when an *offset certificate* has been filed.
A. Satisfaction Piece
20. To be enforceable, a written listing contract must be signed by *seller* and *buyer*.
A. Broker and seller
21. The rule of "*caveat emptor*" applied to a tenant who leases a vacant property.
A. True
22. The largest ownership in real estate is called a *remainder estate*.
A. Fee simple
23. Permitting a later mortgage to take precedence over an earlier mortgage is termed *Right of First Refusal*.
A. Subordination
24. A broker should prepare an agreement of sale in *duplicate*.
A. Quadruplicate
25. An appropriation of land by an owner to some public use and accepted as such is *eminent domain*.
A. A dedication
26. A contract of a minor is *voidable* by him until a reasonable time after he attains his ma-

jority.

A. True

27. A *judgment* is a jurisdiction of the court.
A. A decree
28. *Tenure* is a term used when a person occupies land against the recorded owner for a long period of time.
A. Adverse possession
29. Items which a title company will not insure against are known as *exceptions*.
A. True
30. Under a land contract, *the trustee* retains title until certain stipulated conditions are fulfilled.
A. The owner
31. A listing is terminated by the death of the *salesperson* who obtained it.
A. Broker or owner
32. A person who answers the broker's ad and looks at the property is the broker's *client*.
A. Customer
33. Placing "*For Sale*" signs on property is one of the best ways of securing new listings.
A. "Sold" signs
34. A non-exclusive listing and a *net* listing are the same.
A. An open
35. Violation of a material covenant in a lease by the tenant is an *eviction*.
A. Forfeiture
36. The words, "by, from, through or under" indicate the deed from the grantor is a *general warranty deed*.
A. Special warranty deed
37. When an agreement of sale is executed by seller and buyer, the latter acquires *equitable title*.
A. True
38. An absolute conveyance of real property would be by a *warranty deed*.
A. True
39. In computing the square footage of a home you would use the *outside* measurements.
A. True
40. A suit in equity by a buyer to compel a seller to carry out the terms of an executed agreement of sale is known as *Equity of Redemption*.
A. Specific Performance
41. *Mandamus* is a form of public notice filed against a property that a suit is about to be filed.
A. Lis Pendens
42. The main objective of the homestead law is to protect the owner against foreclosure to *satisfy* debts.
A. True
43. A wall on the line between two adjoining properties, owned by two different parties, is a *division* wall.
A. Party wall
44. Deeds are acknowledged before a notary public in order to enable them to be *recorded*.
A. True
45. If a tenant remains in possession after expiration of a lease for a three-year term, he is again a tenant for *three years*.
A. Tenant from year to year
46. Paying off a mortgage loan by regular monthly payments over an extended period of time is known as *prepayment*.
A. Amortization
47. When a six months' rent payment is required upon signing a lease, the lessor should apply such rent to the *first* six months of the lease term.
A. The *last* six months.

48. The *beneficiary* is the party who executes a deed.
A. Grantor
49. A net listing is usually to the *owner's* advantage.
A. *Broker's* advantage
50. An estate limited to take effect after another estate is terminated is known as a *reversion*.
A. Remainder
51. Title, acquired by occupancy, in defiance of the real owner, over a long period of years, is known as a *tenancy at sufferance*.
A. Adverse possession
52. *Severalty* is the term for all property that can be owned, other than real estate.
A. Personalty
53. An owner, in contracting with a building contractor, will often require him to file a *certificate of no defense*.
A. A no-lien contract
54. An initial conveyance from the federal government to an individual is by a *devise*.
A. Patent
55. Many co-operate apartments are now being converted into *town houses*.
A. Condominiums
56. Syndications are most frequently organized in the form of a *joint venture*.
A. Limited partnership
57. The interstate land sales disclosure act regulates the *sale of real estate through the mail*.
A. The sale or lease of unimproved lots in subdivisions
58. A deed to Louis Stone or Henry Sloan is *void*.
A. True
59. The government official who evaluates property for tax purposes is an *appraiser*.
A. Assessor
60. If the owner must pay the broker a commission, should the owner sell the property during the specified period, the broker has an *exclusive* agency.
A. Exclusive right to sell
61. Listings obtained by a salesperson are considered to be the *salesperson's* personal property.
A. Broker's
62. Whether the broker is the efficient cause of the sale is a question of *law*.
A. Fact
63. In the City Board multi-list association, a member must be a *licensed broker*.
A. True
64. A sales agreement must be *witnessed* in order to be recorded.
A. Acknowledged
65. Fence posts are *personal* property.
A. Real
66. A heavy tractor used to till farm land *is not* real estate.
A. True
67. The *buyer* should pay for the continuation of an abstract of title.
A. Seller
68. The *seller* should pay for an attorney's examination of the title.
A. Buyer
69. An oral contract to sell real estate is *void*.
A. Unenforceable
70. Rescission of a real estate contract is addressed to the *law* side of the court.
A. Equity
71. In an appeal to a higher court, the defendant in the appellate court is the *appellant*.
A. Appellee
72. In an action before the Commission, the licensee is termed *the respondent*.
A. True

73. Where a broker receives earnest money on a deal, he should deposit same in his *insurance account*, insured under the F.D.I.C.
A. Escrow or Trust Account
74. Where a person operates as a real estate broker without a license he is guilty of a *felony*.
A. Misdemeanor
75. A report setting forth the estimate of quantity, quality and value of real estate as of a certain date is known as a *summation*.
A. Appraisal
76. All active officers in a corporation, other than the President, must hold licenses as *salesmen*.
A. Brokers
77. The most frequent ground for which a licensee is disciplined is *misrepresentation*.
A. True
78. Real Estate Commission may issue a *mandamus* to compel a witness to appear before it at a hearing.
A. Subpoena
79. License laws promote *security* to a real estate broker.
A. Professionalization
80. *Chattel* and *personal* property mean the same.
A. True
81. A seller generally pays for the *examination* of the abstract.
A. Continuation
82. An incumbrance is anything which affects the *loan value*.
A. Title
83. *Hand money* is money given to an unofficial stakeholder on a real estate deal.
A. It is deposit or earnest money
84. The primary purpose of an acknowledgment is for *attestation*.
A. Recording
85. Unpaid taxes on real estate constitute a *judgment*.
A. Lien
86. Title to real estate passes to the grantee at the time the deed is *signed*.
A. Delivered
87. Increase in land on shore or bank due to change in flow of a stream is known as *alluvion*.
A. True
88. The interest which a wife of a partner acquires in partnership property is *dower*.
A. Nothing
89. Two brokers can own property as *joint tenants*.
A. True
90. A "Chain of Title" is a term often used by *surveyors*.
A. Abstracters
91. A deed to real estate *can* be assigned.
A. Cannot
92. A percentage lease is based on the *net profits* of the business.
A. Gross volume
93. Taxes *have* priority over recorded mortgages.
A. True
94. The Commission frowns on the use of *exclusive* listings.
A. Net
95. The case of an individual charged with operating without a license is first heard by the *Real Estate Commission*.
A. Court
96. An individual who holds an option on a property is called *an obtainer*.
A. An optionee

97. A freehold that is limited to end with the life of the person to whom it is granted is called an *annuity*.
A. Life estate
98. To be enforceable a listing contract must be signed by the *buyer and seller*.
A. Broker and seller
99. A building contractor, to protect himself, when the owner refuses to pay him for work done, files a *deficiency judgment*.
A. Mechanic's lien
100. The commission to be charged by a real estate broker is fixed by the *legislature*.
A. Parties
101. Generally when looking at a map, *south* will be at your right.
A. East
102. A listing of the same property which is held by several different brokers is called a *multiple* listing.
A. Open
103. *Devise* is the reversion of property to the state due to the lack of heirs.
A. Escheat
104. An acre of land contains 43,650 square feet.
A. 43,560
105. The "*Chain of Title*" is found in the Abstract of Title.
A. True
106. Pro-ration of taxes between seller and buyer is *apportionment*.
A. True
107. A broker may lawfully receive a commission from a *co-broker*.
A. True
108. Unpaid taxes on real property become a *default* against the property.
A. Lien.
109. A *verdict* of a jury constitutes a lien against property of the defendant.
A. Judgment
110. The person who receives a verdict in the court below, is the *appellee* in the appellate court.
A. True
111. A system of land registration by which the state guarantees the title is called the *metric* system.
A. Torrens system
112. A listing on real estate, which is held by more than one broker, is a *multiple listing*.
A. Open listing
113. The tax on a property is determined by multiplying the tax rate by the *appraised valuation*.
A. Assessed valuation
114. A notary public can take the grantor's acknowledgment of the deed *in absentia*.
A. In person
115. When a broker receives three different offers on a listed property, the broker should submit to the owner the *highest* offer.
A. All of the offers
116. Many real estate brokers are lax in keeping complete records of their *trust account*.
A. True
117. Judgments are frequently challenged when entered *by laches*.
A. By confession
118. The width of a lot, multiplied by its depth, gives the *cubage* of the lot.
A. Area
119. Dower is the *remainder right* that a wife has in her husband's estate.
A. Inchoate right
120. A plaintiff who wins a suit is the *appellee* in the appellate court.
A. True

121. An instrument which purports to be a contract, but which is unenforceable, is a *nonentity*.
A. Nudum pactum
122. A person who profits from contract so as to shock the conscience is guilty of *extortion*.
A. Unjust enrichment
123. The trend of many modern cases is oriented to *rights of minors*.
A. Consumer protection
124. Commission disputes between broker and salesman should be brought before the *Real Estate Commission*.
A. In court
125. The person ordinarily liable for the payment of utilities for a leased property is the *lessee*.
A. True
126. A certificate of no defense is the same as an *estoppel certificate*.
A. True
127. Where a buyer refuses to go through with a deal, the seller should make *specific performance*.
A. Tender of deed and demand of purchase price.
128. Any licensed broker who is a bona fide member of a national service club is a *Realtor*.
A. Not true
129. The *lessee* generally pays the taxes on leased property.
A. Lessor
130. A contract with a minor is *void*.
A. Voidable by the minor
131. In numbering a township section, number 6 is always in the *northwest* corner.
A. True
132. The amount of earnest money to be paid is determined by a *minimum of 5 per cent of the purchase price*.
A. Agreement of the parties
133. As a general rule the *optionee* has the right to collect rents on the optioned property during the life of the option.
A. Optionor
134. A unit of measure 5,280 feet long is a *chain*.
A. Mile
135. A dividing wall between two buildings, owned separately, which is used by both properties, is a *brick* wall.
A. Party wall
136. An individual appointed by a court to settle a deceased person's estate is called a *guardian*.
A. Administrator
137. If the owner refuses to pay an earned commission, the broker should file a *lien*.
A. A suit in court
138. Title to vacant land may be conveyed by executing a *bill of sale*.
A. A deed
139. If a broker is delinquent in paying his annual renewal fee, his license is *considered to be in force for only the thirty-day grace period*.
A. Cancelled
140. A *binder* is a decree of court declaring one individual is indebted to another and fixing the amount of such indebtedness.
A. Judgment
141. The *beneficiary* is the one who gives a mortgage on his property in return for a loan.
A. The mortgagor
142. *Title I* of the FHA Act provides for unsecured home improvement and repair loans.
A. True
143. The "*Fanny Mae*" organization was set up by the Federal Government to create a sec-

- ondary mortgage market.
A. True
144. A mortgage represents a *liquid* asset of the mortgage.
A. Frozen
145. Farm property cannot be leased for more than *twenty years*.
A. Any period.
146. Broken windows is a leased premises are the responsibility of *the tenant*.
A. True
147. The legal compensation for the use of money is called *rent*.
A. Interest
148. A purchaser at a foreclosure sale usually receives a *Bargain and Sale deed*.
A. Sheriff's deed, tax deed
149. A lease cannot be recorded unless it is acknowledged by the *notary public*.
A. Lessor
150. There are 36 feet in a rod.
A. $16\frac{1}{2}$
151. There are 36 sections in a township.
A. True
152. Title to real estate passes when the deed is *signed, sealed and witnessed*.
A. Signed, sealed and delivered.
153. *Quantum meruit* in law means what his services are worth.
A. True
154. A good title and a *marketable* title are generally considered to mean the same thing.
A. True
155. There are 360 acres in a section.
A. 640
156. There are *forty* acres in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of a section of land.
A. Ten
157. When a grantor faultily signs a deed, he can be compelled to 'execute a *reformation* deed.
A. True
158. Witnessing a deed is *attestation* of the deed.
A. True
159. A quit claim deed is used to remove an *out-dated mortgage*.
A. Cloud on title
160. A main objective of the Homestead Law is to protect against *executions* to satisfy debts.
A. True
161. A deed acknowledged in a foreign country should be before a *notary public of that country*.
A. Minister or Consul of this country
162. Owner of a condominium unit is able to obtain *F.H.A.* financing.
A. True
163. Condominium ownership is the result of a *federal* enabling act.
A. State
164. *Alluvial land* is generally unproductive land on which the cost of production approximates the gross return.
A. Marginal
165. The process of paying off a loan by installments is known as *acceleration*.
A. Amortization
166. A decision of the Real Estate Commission may be appealed to the *Attorney General*.
A. Court
167. *Tenancy at Sufferance* is the leasing by a tenant to another.
A. Subletting
168. A *zoning ordinance* is an ordinance of a city limiting the character and use of property.
A. True

169. A suit to quiet title is used to remove an *out-dated mortgage*.
A. True
170. Failure to perform terms of a contract is a *default*.
A. True
171. Horizontal rows of townships are called *ranges*.
A. Tiers
172. A *suit for specific performance* is used to remove a cloud on the title.
A. Suit to quiet title.
173. Mortgage guaranteed by the Veteran's Administration is an *F.H.A. mortgage*.
A. V.A. mortgage
174. An action to correct a mistake in a deed is called *redemption*.
A. Reformation
175. Metes and bounds refer to the *topography* of the land.
A. Direction and distance of the boundaries
176. A judgment is by *stipulation* of both parties in a law suit.
A. A court decree
177. Rate of commission to be charged is fixed by the *Real Estate Commission*.
A. Contract
178. Forfeiture is the violation of a material provision in the lease by the *landlord*.
A. Tenant
179. From the grantee's standpoint a *special* warranty deed is preferable.
A. General warranty
180. The SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of a section contains 20 acres.
A. 10 acres
181. The highest ownership which may be enjoyed in real estate is *absolute* title.
A. Fee simple
182. When a person dies without leaving a will he is said to have died *inchoate*.
A. Intestate
183. *Alluvion* is the wearing away of land by streams and the elements.
A. Erosion
184. A percentage lease is based on the *net profits* of the business.
A. Gross volume of sales
185. *Negotiation* of a note is signing on the reverse side of the instrument.
A. Endorsement
186. A lease to a husband and wife creates an *estate by the entirety*.
A. A leasehold
187. A purchaser at a foreclosure sale receives a deed from the *mortgagee*.
A. Sheriff
188. A plumber, to protect himself for unpaid work, may file a *deficiency* judgment.
A. Mechanics lien
189. The apportioning of taxes, rents, mortgage interests and insurance is called *marshaling*.
A. Prorating
190. If the buyer is to obtain an amortized mortgage, the agreement should specify amount, interest rate and *monthly installments*.
A. True
191. A licensed broker may lawfully pay a part of his commission to a licensed *salesman* of another broker.
A. Licensed broker
192. Procuring listings by house-to-house solicitation is unethical.
A. True
193. *Earnest money* is the compensation which a broker receives in a deal.
A. Commission
194. Adding an adverse possessor's occupancy to a previous adverse occupancy constitutes *acceleration*.

- A. Tacking
195. A *deficiency judgment* is the difference between amount owed on a mortgage and the price realized at a foreclosure sale on the mortgage.
A. True
196. The common law interest which a husband has in and to his wife's estate at her death is known as *dower*.
A. Curtesy
197. A broker should prepare *three* copies of an agreement of sale, where the transaction is to be financed by a mortgage.
A. Four
198. A person other than the mortgagor, who is in possession at the time of a foreclosure sale, is known as the *mortgagee* in possession.
A. Terre tenant
199. NAREB, Inc. stands for the National Association of Real Estate Boards, Inc.
A. The National Association of Real Estate Brokers, Inc.
200. An Estoppel Certificate is the same as a *Certificate of No Defense*.
A. True
201. In the enactment of the state real estate license laws, the *public* has been in the forefront.
A. The State Associations of Realtors

SIMPLE ARITHMETIC, LAND DESCRIPTION PROBLEMS, AND CLOSING STATEMENTS

A knowledge of simple arithmetic is basic to the real estate business. The problems used in this section identify with arithmetic problems encountered in everyday real estate practice. The approach to even a simple problem should be unhurried and, whenever possible, should be double checked for accuracy. Simple arithmetic problems are anchored to the “four corners” of addition, subtraction, multiplication and division.

TABLES OF LAND MEASURE

Linear Measure

1 link	= 7.92 inches
1 rod	= $16\frac{1}{2}$ feet; $5\frac{1}{2}$ yards
1 chain	= 66 feet; 4 rods
1 furlong	= 660 feet
1 mile	= 5,280 feet

Square Measure

1 acre	= 160 sq. rods; 43,560 sq. ft.
1 section	= 640 acres
1 sq. mile	= 640 acres
1 township	= 36 sq. miles

$$1 \text{ yard} = 0.9144 \text{ meter (m)}$$

$$1 \text{ rod} = 5.029 \text{ meters (m)}$$

$$1 \text{ mile} = 1.6093 \text{ meters (m)}$$

Areas

$$1 \text{ square inch} = 6.452 \text{ square centimeters (cm}^2\text{)}$$

or

$$645.2 \text{ square millimeters (mm}^2\text{)}$$

$$1 \text{ square foot} = 0.0929 \text{ square meter (m}^2\text{)}$$

$$1 \text{ square yard} = 0.836 \text{ square meter (m}^2\text{)}$$

$$1 \text{ square rod} = 25.29 \text{ square meters (m}^2\text{)}$$

$$1 \text{ acre} = 0.4046 \text{ hectares (ha)}$$

$$1 \text{ square mile} = 259 \text{ hectares (ha)}$$

METRIC CONVERSION TABLES

Lengths

$$1 \text{ inch} = 2.54 \text{ centimeters (cm)}$$

or

$$25.4 \text{ millimeters (mm)}$$

$$1 \text{ foot} = 0.3048 \text{ meter (m)}$$

(See solutions on pages 715-752.)

- Q. How much would it cost to develop a parking lot allowing 300 square feet for each parking space on a plot 500 front feet and 300 feet deep, if paving costs \$.60 per square foot, curbs and gutters cost \$5.00 a front foot to be installed only on a front foot basis and lighting costs are \$5,000?
A. \$97,500
- Q. How many parking spaces will be provided on the above lot?
A. 500 spaces
- Q. A broker has sold three lots for a total of \$10,000. Since the second lot was sold for \$1,200 more than the first, and the third lot brought \$1,600 more than the second, what did each lot sell for?
A. \$2,000; \$3,200; \$4,800
- Q. McDonald buys a storage building containing 8,000 square feet for \$72,000. His gross rental is based at \$1.75 per square foot of rental area. His total expenses are \$7,000 for the year 1973. What was his 1973 return on his investment?

- A. $9.72 + \text{percent}$
5. Q. Jack Elder has a two-acre tract of land which he is subdividing into lots. He plans to make each lot 60 feet by 190 feet in depth. If he provides a center street 28 feet wide by 210 feet in depth, how many full lots will Elder be able to market?
- A. 7 lots
6. Q. On a plot prepared for a subdivision, $\frac{1}{8}$ inch represents one foot of land. One lot is shown as $6\frac{1}{2}$ inches wide. According to the scale, what is the width of the lot?
- A. 52 feet
7. Q. Brown listed a commercial lot for sale with Betty Edwards, Realtor, at \$24,000. The lot is 90 ft. front and 180 ft. deep. Edwards received an offer from King at \$250.00 per front foot. She also received an offer from Queen at \$1.25 per square foot. Which is the better offer and by how much?
- A. King's offer by \$2,250
8. Q. An apartment building has 3 floors and each floor contains 4 units. First floor units rent for \$125 per month each, second floor units rent at \$120 each and third floor units rent at \$110.00 each. Total yearly expense is \$2,800.00. The owner receives 8 per cent return on his investment. What is the value of his investment?
- A. \$178,000
9. Q. A man borrowed \$1,500, which he agreed to repay at $5\frac{1}{2}\%$ interest a year. He paid \$25 interest; how long did he keep the money?
- A. 3 months, 20 days
- ✓ 10. Q. A broker sells the NW $\frac{1}{4}$; NW $\frac{1}{4}$; SE $\frac{1}{4}$; Sec. 31; T 4 NR 5 EMB for the owner at \$225 per acre. The commission is 5%. The broker must pay 10% of the commission to the salesman, who listed the property. What is the net amount the broker receives in the sale?
- A. \$101.25
11. Q. A man has an opportunity to buy a lot for \$1,000, and a guarantee of resale value one year later of \$1,200. He also has an opportunity to lend \$1,000 to an individual with repayment within a year at 10% interest. Which is the better investment and by what amount?
- A. \$100 better for lot
12. Q. A tract of land contains 348,480 sq. ft. It sold for \$800 per acre. What was the total selling price?
- A. \$6,400
13. Q. A piece of farm equipment cost \$11,000 and its usefulness will end in 20 years. What is the depreciation per year in terms of money and per cent?
- A. \$550 depreciation per year
5% depreciation per year
14. Q. How many acres are there in the S. $\frac{1}{2}$ of the N.E. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of a section?
- A. 5 acres
15. Q. \$2,000 is equal to 8% of the price paid for a dwelling. What was the price paid?
- A. \$25,000
16. Q. What is the annual interest rate on an \$8,000 loan when the interest payments are \$120 per quarter on the loan?
- A. 6%
17. Q. If the rate of interest is 6% per annum and your monthly interest payment is \$100, what is the amount of the debt?
- A. \$20,000
18. Q. Which of the following is preferable from an investor's standpoint on a \$10,000 principal: (a) 3 months at an annual interest rate of 8% (b) 4 months at an annual interest rate of 7%?
- A. (b) \$33.33 more interest
- ✓ 19. Q. Which of the following tracts contains the most acres: (a) N $\frac{1}{2}$ of the S $\frac{1}{2}$ of the N.W. $\frac{1}{4}$ of Section 16 (b) W $\frac{1}{2}$ of the E $\frac{1}{2}$ of the S.E. $\frac{1}{4}$ of Section 16?

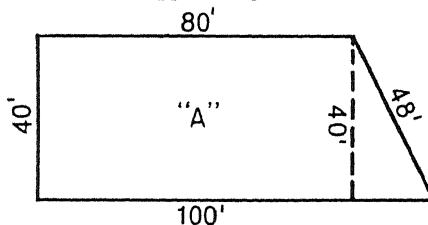
- A. Same acreage
20. Q. Which is greater in value (a) $\frac{6}{5} \times \$300$ or (b) $\frac{5}{6} \times \$360$?
A. (a) by \$60
21. Q. An apartment building shows a profit of \$425 per month and is earning 8 per cent on the entire investment. What is the building worth?
A. \$63,750.00
22. Q. A real estate broker, at closing, deducted a commission of 5%. The owner then received \$15,751.00. What was the selling price?
A. \$16,580.00
23. Q. A salesman sells $2\frac{1}{2}$ sections of land to a subdivider for \$50 an acre. What is his commission if he receives 40% of a 5% commission?
A. \$1,600
24. Q. A rectangular piece of ground has a frontage of 450 feet and a depth of 600 feet. At \$100 per acre, what is the selling price?
A. \$620
25. Q. Alberts and Briggs purchased an apartment building for \$20,000. Alberts contributed \$12,000. Briggs invests \$8,000. At the end of the year, the net profit is \$12,000. How much will each partner receive based on his investment?
A. (a) Alberts, \$7,200 (b) Briggs, \$4,800
26. Q. Allen Michaels, Realtor, is a member of Garden City Council. As chairman of the Finance Committee, he is requested to figure the real estate tax rate. Real estate assessments total \$4,540,000. Subsidies and license fees aggregate \$77,800. Expenses for the 1972 year are estimated at \$147,800. What should be the tax rate per \$1,000 of assessment?
A. \$15.41
27. Q. Adams buys a new home for \$20,000 with F.H.A. financing. He makes an initial payment of \$3,600 and minimum monthly payments on the principal at \$97.79 per month. How many years will be required to pay off his indebtedness?
A. 14 years
28. Q. Adams purchases a dwelling for \$25,000. He makes a \$5,000 deposit and agrees to 6% interest on the unpaid debt, plus \$100 per month on the principal. He sells the house two months later for \$28,000 to Brown who assumes the mortgage. How much interest has Adams paid? Brown will receive credit on the purchase price for what amount?
A. (a) \$199.50 (b) \$19,800
29. Q. Taxes of \$92.46 are due and payable on January 1 of each year. If paid before January 31, a discount of $2\frac{1}{2}$ per cent is allowed. Thompson pays his tax on January 26, 1972. What amount does he pay?
A. \$90.15
30. Q. Chandler bought a house for \$6,700, paying \$1,200 cash and a purchase money mortgage for the balance at 5%. In addition to the interest on the mortgage and an annual depreciation of 2%, his annual expenses total \$227. His rent income is \$60 per month. What was Chandler's net return on his cash investment?
A. \$84; 7%
31. Q. Coburn buys a house as an investment for \$7,500. His annual expenses are: Taxes, \$75.25; Insurance, \$18.15; Repairs, \$115.10. What rent must he charge to realize $4\frac{1}{2}$ % on his investment?
A. \$45.50 mo. rental
32. Q. A rose bush grows in the middle of a circular plot that has a diameter of 3 yards. At 25 cents a foot, what will it cost to enclose the rose bush?
A. \$7.07, cost
33. Q. A \$10,000 loan at seven per cent interest with equal monthly payments to principal and interest can be amortized in 20 years at a total cost to the borrower of \$15,600. Compute (a) the monthly payment and (b) that portion applied to the principal for the first month.

- A. (a) \$65.00 (b) \$6.67
34. Q. Jones bought a 4-family apartment house for \$45,000, paying \$20,000 cash, giving a mortgage for the balance at 6%. The lot is valued at \$10,000. Each apartment rented for \$125 a month. Expenses on the mortgage interest at 6%; depreciation at 2%; taxes, insurance and repairs were \$1,825. What is his rate of income?
- A. \$1,975, net income, or, 4.38%
35. Q. A salesman's half of a 5 per cent commission on a \$6,250 sale would be how much?
- A. \$156.25
36. Q. If a man's income is \$195 per month and his home cost $2\frac{1}{2}$ times his annual income, the home would cost him how much?
- A. \$5,850.00
37. Q. What is the annual interest rate on a \$6,000 loan when the interest payments are \$210 semi-annually on the full amount?
- A. 7%
38. Q. The value of a house at the end of 4 years was estimated to be \$8,725. What was the original cost of the house if the annual rate of depreciation was $4\frac{1}{4}$ per cent?
- A. \$10,512.04
39. Q. On September 1, 1971, Jones purchased a 3-year comprehensive insurance policy for 90 per cent of its \$24,000 value. The insurance premium was 54 cents per \$100 of the policy. Jones sold the house on April 1, 1972. What was the prorata share of the premium owed by the buyer?
- A. \$93.96
40. Q. Biggs and Diggs buy an apartment building for \$40,000. Biggs contributes \$24,000 to the purchase price and Diggs contributes \$16,000. At the end of the first year, the net profit is \$3,000. How much will each receive?
- A. Biggs, \$1,800; Diggs, \$1,200
41. Q. Michael Gordon, Realtor, is Chairman of the Garden City Council's Finance Committee. He is requested to compute the millage tax rate for combined city and school for 1973. Real Estate assessments total \$6,500,000. Subsidies and license fees will yield \$85,000 for the year. Operating expenses for 1973 are estimated at \$200,000. What should be the tax rate per \$1,000 of the assessed real estate?
- A. \$17.69
42. Q. The John Grove residence in Garden City, valued at \$30,000, is assessed at 30% of its market value. What will be his tax in 1973?
- A. \$159.21
43. Q. In the above case, the taxes are due January 1 of each year in Garden City, but if paid by January 31, a discount of 5% is allowed. If Grove pays his tax on January 10, 1973, how much will he save?
- A. \$7.96
44. Q. Lane offers to sell an income property to Sloan. The income is \$250 per month and the total annual expenses are \$900. Sloan figures on a 7% return on his investment. How much should he offer Lane?
- A. \$30,000
45. Q. What is the square foot area of a circle with a radius of 6 feet?
- A. 113.10 square feet
46. Q. Waldo owns a corner lot 250 feet wide and 350 feet in depth. To keep people from trespassing, Waldo erects a fence around the lot. The fence cost him 35 cents per foot. What was the cost of the entire fence?
- A. \$420
47. Q. Jones owns a chestnut tree dating back to the American revolution. He desires to enclose the ground surrounding the tree by a circular tract, having a diameter of four yards. The cost of the fence will be 30 cents per foot. What will the fence cost?
- A. \$11.31
48. Q. If an investor purchased an apartment building for \$90,000 and received an an-

- nual net income of \$6,750, what percentage on his investment did the property earn?
- A. $7\frac{1}{2}$ per cent
49. Q. Evans entered into a contract with Harper, a builder, to construct a house for him on a cost plus 15 per cent basis. The contractor made the following expenditures: foundation and masonry, \$2,800; lumber and carpenter work, \$2,400; plumbing, \$2,450; heating and air-conditioning, \$2,850; electrical work and equipment, \$3,000; painting, \$1,400; landscaping, \$790; roofing, \$900; extras, \$700. What was the total cost of the house?
- A. \$19,883.50
50. Q. Included in the sale of furnishings in a house was an oriental rug, which cost the owner \$750, and which he sold to the buyer for \$450. What percentage of loss did the owner suffer?
- A. 40 per cent
51. Q. A mortgage company agreed to lend an owner 80% of its appraised value at 6% interest per annum. If the interest payment for the first month is \$96, what was the appraised valuation?
- A. \$24,000
52. Q. Taylor bought an apartment building for \$72,000 and received a net return of \$500 per month. What was his percentage return on his investment?
- A. $8\frac{1}{3}$ per cent
53. Q. Adams buys a new dwelling for \$25,500 and makes an initial deposit of \$5,500. He then obtains an F.H.A. mortgage for the balance. The minimum monthly payment on the indebtedness is \$100. How many years will be required to pay off the mortgage, excluding interest payments?
- A. 16 years, 8 months
54. Q. Chanas purchases a dwelling for \$25,000. He pays \$5,000 cash and gives the seller, Saxton, a purchase money mortgage for the balance at 6% interest, with \$100 monthly to be paid on the principal. He sells the property two months later to Logue for the original purchase price. (a) How much interest has Chanas paid? (b) On the closing statement, Saxton will be credited with what amount?
- A. (a) \$199.50; (b) \$19,800
55. Q. A broker sells a lot 50' front by 100' in depth for 75 cents a square foot. His commission is 10 per cent. How much does the seller receive?
- A. \$3,375
56. Q. What is the purchase price of a property, if a 20% earnest money deposit is \$2,500?
- A. \$12,500
57. Q. A lot 69 feet wide and 142 feet in depth sold for \$2,645.46. How much did the owner receive per square foot?
- A. 27 cents
58. Q. The owner of a block of 14 building lots, each 75 feet front, desires to realize \$33,750 from the tract, keeping two lots for himself. What would be the sales price per front foot?
- A. \$37.50
59. Q. What is the cost of a tract of land 264 feet wide by 660 feet deep at \$800 per acre?
- A. \$3,200
60. Q. If the annual 5 per cent interest payment on a mortgage amounts to \$350, what is the amount of principal?
- A. \$7,000
61. Q. A lot 80 feet by 120 feet deep cost \$75 per front foot. What is the cost of the lot?
- A. \$6,000
62. Q. A man built a house which was rectangular in shape. The dimensions were 24 feet by 36 feet. What is the total number of square feet in this house?
- A. 864 sq. ft.

63. Q. A loan made April 17 is repaid June 26. For how many days should the interest be calculated?
A. 69 days
64. Q. How many board feet are there in 48 pieces of $2'' \times 4''$ lumber, each of which is 12 feet long?
A. 384 board feet
65. Q. January 1 to March 15 is what fraction of a year?
A. $\frac{5}{24}$ of a year
66. Q. Three and one-half months is what fraction of a year?
A. $\frac{7}{24}$ of a year
67. Q. The decimal .375 is equal to what fraction?
A. $\frac{3}{8}$
68. Q. The decimal $.38\frac{1}{3}$ is equal to what fraction?
A. $\frac{23}{60}$
69. Q. The fraction $\frac{1}{8}$ is what per cent?
A. $12\frac{1}{2}\%$
70. Q. The fraction $\frac{1}{6}$ is what per cent?
A. $16\frac{2}{3}\%$
71. Q. What is the sum of $\frac{1}{2}$ and $\frac{3}{4}$ and $\frac{1}{8}$?
A. $1\frac{3}{8}$
72. Q. What is the difference between $1\frac{1}{4}$ and $\frac{3}{8}$?
A. $\frac{7}{8}$
73. Q. One-half acre and five-eighths acre and three-sixteenths acre equals how many acres?
A. $1\frac{5}{16}$ acres
74. Q. If a farmer sells one-half of 20 acres and plans to divide one-fourth of the balance into lots, how many acres are left?
A. $7\frac{1}{2}$ acres
75. Q. What is one-half of one-fourth?
A. $\frac{1}{8}$
76. Q. What is one-half divided by one-fourth?
A. 2
77. Q. Twenty-five days is what part of a year?
A. $\frac{5}{73}$
78. Q. Twenty-one days is what part of a month?
A. $\frac{7}{10}$ or .7
79. Q. Three-fifths is equivalent to what per cent?
A. 60%
80. Q. Eighty-seven and one-half per cent is equivalent to what fraction?
A. $\frac{7}{8}$
81. Q. Six months is what part of three years?
A. $\frac{1}{6}$
82. Q. How much is $\frac{2}{3}$ multiplied by $\frac{1}{2}$?
A. $\frac{1}{3}$
83. Q. How much is $\frac{2}{3}$ divided by $\frac{1}{2}$?
A. $\frac{4}{3}$ or $1\frac{1}{3}$
84. Q. How much is $\frac{1}{2}$ divided by $\frac{2}{3}$?
A. $\frac{3}{4}$
85. Q. Two-thirds of a year is how many months?
A. 8 months
86. Q. One-fifth of a year is how many days?
A. 73 days
87. Q. One-sixth of an acre is how many square feet?
A. 7,260 sq. ft.
88. Q. What part of an acre is 5,445 square feet?

- A. $\frac{1}{8}$ acre
89. Q. A farmer wants to sell part of his land but one-fourth he is giving to his son; $\frac{3}{16}$ to his daughter. What part of the land is left to sell ?
A. $\frac{9}{16}$
90. Q. Add: $26\frac{1}{2} + 19\frac{3}{4} + 8\frac{5}{6} + 44\frac{2}{3}$
A. $99\frac{3}{4}$
91. Q. Divide: $18\frac{1}{2} \div 4\frac{1}{6}$
A. $4\frac{11}{25}$
92. Q. \$223.65 is $5\frac{1}{4}\%$ of what amount ?
A. \$4,260.00
93. Q. Multiply: $.75 \times .83\frac{1}{3}$ (express your answer in lowest fraction)
A. $\frac{5}{8}$
94. Q. The value of a frame home at the end of 7 years was estimated to be \$8,085. What was the original cost if the yearly depreciation was $2\frac{1}{2}\%$?
A. \$9,800.00
95. Q. A property sells for \$19,750. You as listing salesman are to receive $12\frac{1}{2}\%$ of the total 6% commission collected on the sale. What amount will you receive?
A. \$148.13
96. Q. What is the interest rate on a \$13,800 loan when the monthly interest payments are \$71.30 on the full amount ?
A. 6.2 or $6\frac{1}{5}\%$
97. Q. An owner lists property for sale with a broker to net him \$9,000, after paying the broker a 7 per cent commission. At what price would the broker have to sell the property?
A. \$9,677.42
98. Q. A property was listed for sale with a broker at \$30,000. The actual sale was made at 10% less than the listed price. The commission rate is 7%. What loss in commission did the broker incur by not selling at the listing price?
A. \$210
99. Q. A vacant lot has 60 feet frontage and 80 feet width in the rear, the depth is 150 feet. The property was sold for \$13,125.00. What was the price per square foot?
A. \$1.25
100. Q. A room is 20 feet in length, 17 feet wide and $9\frac{1}{2}$ feet high. What is the volume (cubic feet)?
A. 3,230 cubic feet
101. Q. What is the square foot area of the opposite figure "A"?



- A. 3600 square feet
102. Q. The legal description of a farm is N.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the N.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of Section 17, Township 6 N, Range 3E of the Boise Meridian. How many acres in the farm?
A. 60 acres
103. Q. What would be the appraisal of a bungalow 30 feet by 40 feet at a replacement cost of \$15.00 per square foot, allowing 3 per cent depreciation for 3 years?
A. \$16,380
104. Q. Mary Crow receives a rental of \$100 per month and her expenses are \$360.00 per year. What is her net income per month?
A. \$70

105. Q. Stone's house is assessed at 50 per cent of its market value for the triennial period 1975, 1976, 1977. Stone bought the property on December 6, 1974 for \$22,000.00. The adjusted tax rate is 62 mills. What is the tax for 1975?
A. \$682
106. Q. A farm fronts on two roads running at right angles to each other. The frontage on one road is 5,280 feet, and on the other 2,640 feet. A third boundary line runs parallel to the shorter of the two road frontages, alongside the farm for a distance of 5,280 feet. How many acres in the farm?
A. 480 acres
107. Q. The mortgage loan on a house is \$9,500. The monthly interest and amortization of principal require \$9.50 per \$1,000 of loan. The annual taxes are \$291. The fire and extended coverage insurance rate is 98¢ per \$100 on a three-year policy on the amount of the original loan.
a. What is the monthly payment on interest and principal?
b. What is the monthly tax payment?
c. What is the monthly insurance payment?
d. What is the total monthly payment to be made on interest, principal, taxes and insurance?
A. a. \$90.25
b. \$24.25
c. \$2.59
d. \$117.09
108. Q. A tract of land is bisected by a stream, leaving two triangular plots. One lot has a street frontage of 500 feet and a depth of 760 feet. How many acres does it (the one lot) contain?
A. 4.36 acres
109. Q. A farm earns \$3,600 net after allowing \$24 a month for all expenses. A buyer wants 6 per cent return on his money. What would he have to pay for the farm so as to gross 6 per cent?
A. \$64,800
110. Q. One rule of thumb says that a person can afford to buy a home costing $2\frac{1}{2}$ times his annual income. What would be the minimum weekly salary of a factory worker to buy an \$18,915 home using this rule?
A. \$145.50
111. Q. A subdivider purchased a parcel of land 1320' by 1980'. How many $\frac{1}{3}$ acre sites can he obtain in this parcel allowing $16\frac{2}{3}\%$ of the total for streets and a school site?
A. 150
112. Q. An owner of a home had it listed for sale at a price which exceeded the F.H.A. appraisal by 15 per cent. He lowered the asking price to the appraisal figure, which was \$9,265. What was the original listing price?
A. \$10,900
113. Q. A lot 75' wide and 115' deep is assessed at \$24 per front foot. The house is assessed at 4.8 times that of the lot. The tax rate is 68 mills. What are the annual taxes?
A. \$709.92
114. Q. The owner of a farm said that $\frac{1}{4}$ was not usable, $\frac{3}{5}$ was under cultivation, the remaining 60 acres was a grass meadow. How many acres in the whole farm?
A. 400 acres
115. Q. A house is 27 feet long, 18 feet wide, and 9 feet high.
Contractor "A" bids 98¢ per cubic foot, not including attic.
Contractor "B" bids \$1.95 per square foot of floor area, plus \$17.50 per cubic yard of concrete used for a 6" concrete floor.
Contractor "C" bids \$1,195.
(a) Q. What was contractor "A's" bid?
A. \$1,268.46

- (b) Q. What was contractor "B's" bid ?
A. \$1,105.20
- (c) Q. Which contractor bid the lowest ?
A. B
- (d) Q. What is the dollar difference between the high and low bid ?
A. \$163.26
- 116. Q. A broker sold a lot 125 feet wide and 160 feet deep for 17 cents per square foot, but the purchaser assumed a paving lien of \$2.25 per front foot. What total amount would the purchaser have to ask for the property if he expected to make a profit of \$295 and give a clear title to the property?
A. \$3,976.25
- 117. Q. If a man has a \$325 weekly gross income from his property and a monthly expense of \$845 on it, what is the annual per cent of interest return on his investment of \$84,500 ?
A. 8 per cent
- 118. Q. What is the interest on \$4,000 for 3 years, 5 months, and 20 days at $6\frac{1}{2}$ per cent per annum?
A. \$902.80
- 119. Q. A salesman has an agreement with his broker that all commissions collected on sales are to be divided as follows: 10% to the salesman who obtains the listing and the balance to be divided equally between the broker and the salesman who makes the sale. Salesman closes a \$23,000 sale and the office collects a 5% commission of the gross sales price. What is the amount of commission earned by a salesman who made the sale but did not obtain the listing?
A. \$517.50
- 120. Q. A sale was closed on a 190-acre farm on March 1, 1974. The sale price was \$175.50 per acre. The buyers paid \$5,000 in cash at the time of making the offer and agreed to assume a mortgage of \$18,300, plus interest of \$183, and signed a contract of sale in the amount of \$3,972.07. How much additional cash did the buyer need at closing?
A. \$5,889.93
- 121. Q. Jones built a house which was 26 feet by 38 feet and the average height was 14 feet. What is the number of cubic feet in this house?
A. 13,832 cu. ft.
- 122. Q. James Brown built a home which was 28 feet by 40 feet. It was a single-story ranch type. The cost of building averaged \$11.25 per square foot. What was the total cost of the home?
A. \$12,600
- 123. Q. Cole is asked to appraise an open lot with no improvements on it. The neighborhood is about 75 per cent built up. Most lots in the area are from 55 to 65 feet wide. The lot under appraisal is 60 feet. Comparable sales are found which indicate that lots are selling from \$60 to \$75 per front foot. What is a good estimate of price range for this lot ?
A. \$4,050
- 124. Q. An owner insists upon receiving \$8,250 net for his property and will pay the broker 5% commission. What sales price must be asked to accomplish this?
A. \$8,684.21
- 125. Q. What is the annual interest rate on a \$5,000 loan when the quarterly interest payments are \$93.75 ?
A. $7\frac{1}{2}\%$
- 126. Q. What will the taxes be for six months on property valued at \$8,000 if the tax rate is \$2.27 per \$100 valuation per year?
A. \$90.80
- 127. Q. An acre of land contains 43,560 sq. ft. What is the cost of a lot 132 ft. by 330 ft. at \$800 per acre?

- A. \$800.00
128. Q. How much additional cash must a buyer furnish in addition to his \$500 deposit if the lending institution grants 60% on an \$8,000 home?
- A. \$2,700.00
129. Q. A man purchased a building for \$120,000. His gross income was \$23,000 per year. His expenses amounted to \$11,000. What rate of return did he earn on his investment?
- A. 10%
130. Q. An apartment house owner receives \$4,800 per year net income from his investment of \$60,000. What percentage does he receive on his money?
- A. 8%
131. Q. \$57.50 is 5% of what sum?
- A. \$1,150.00
132. Q. A lot 75 feet wide and 110 feet deep sold for \$8,750.
What was the price per front foot?
What was the price per square foot?
- A. \$116.67 per front foot
\$1.06 per square foot
133. Q. A broker sold a lot of 75 feet frontage by a depth of 120 feet at a price of 20¢ per square foot but the purchaser was to assume sewer and paving bills at the rate of \$5.50 per front foot. The buyer stated that he would list the property but would expect a profit of 10% plus the broker's commission of \$590.00. What would the new price be?
- A. \$3,023.75
134. Q. A two-story house cost \$8,568 to build. If the house had a frontage of 34 feet, a depth of 28 feet and was 30 feet high including the basement, what was the cost of the house per cubic foot?
- A. \$.30 per cubic foot
135. Q. If you bought two lots for \$4,000 each, then made three lots out of this parcel and sold the lots for \$3,000 each, how much did you make?
What per cent of profit was this on your investment?
- A. \$1,000.00
 $12\frac{1}{2}\%$
136. Q. A property has a net income of \$8,500 a year. If you want to earn 8% on your investment, how much would you pay for the property to realize this rate of return?
- A. \$106,250.00
137. Q. Compute the cost of excavation for a cellar 25 feet wide, 30 feet long and 5 feet deep at \$2.90 per cubic yard.
- A. \$402.78
138. Q. You represent a seller offering a tract of land 495 feet wide and 1,320 feet deep. The selling price is at the rate of \$200.00 per acre. What is the total price?
- A. \$3,000.00
139. Q. A man bought two lots for \$3,000 each, divided them into three lots and sold the three lots for \$2,400 each. What was his percentage of gross profit?
- A. 20%
140. Q. Bell wishes to build a flat-roofed building 130 feet long, 30 feet wide and 24 feet high. Dusch offers to build such a structure for \$8.90 per square foot. Sherwin offers to build the building for \$.37 $\frac{1}{2}$ per cubic foot. How much will Bell save by giving the building contract to Dusch?
- A. \$390.00
141. Q. In a contract for sale of real estate, the sales price is fixed at \$6,000 and of this amount \$1,200 is paid down at the time of the sale and the balance is payable in monthly installments of \$50.00 plus, in addition to which the buyer pays interest. The contract is dated January 1, 1974, and the 1st payment is due February 1, 1974. Assuming that all payments are made regularly and not more than \$50.00 is

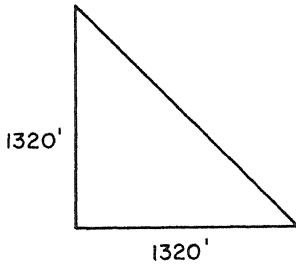
- paid on the principal on any installment date, state when contract will be paid in full.
- A. January 1, 1982
142. Q. Jones is working on a 50-50 split commission with your firm. He sells the S $1\frac{1}{2}$ of the NE $\frac{1}{4}$ of Sec. 27, T-8-N, R-14-E of 6th P.M. for \$207.50 per acre. The commission schedule for your agency calls for 5% on the first \$20,000; 3% on the next \$15,000; and $1\frac{1}{2}\%$ on the balance of the selling price. Jones must pay $7\frac{1}{2}\%$ of his share of the commission to Lawrence, the salesman who listed the property. What is the net amount Jones will receive for this sale?
- A. \$383.87
143. Q. There is a balance of \$9,000 due on a real estate contract that requires monthly payments of \$80.00 plus interest at 6% per annum payable monthly. What would be the total monthly payments for:
- (a) the first month (b) the third month (c) the fifth month ?
- A. (a) \$125.00
(b) \$124.20
(c) 123.40
144. Q. A broker has a problem of subdividing a ten-acre tract into 50×100 foot lots; after allowing 85,600 square feet for the necessary streets, how many lots will the broker realize from this subdivision?
- A. 70
145. Q. A certain commercial property was a two-story structure. It measured 46 feet by 80 feet. The height of the first story was 16 feet and the second was 14 feet. The estimated unit cost of reproduction is 80¢ per cubic foot for the first story and 60¢ per cubic foot for the second story. What is the estimated reproduction cost of this building?
- A. \$78,016.00
146. Q. A man bought two lots, one for \$3,000 which was 60% of the cost of the other. What was the cost of the other lot ?
- A. \$5,000
147. Q. There is an F.H.A. conditional commitment on a duplex which is not going to be occupied by owners, for \$24,750. On closing the loan the mortgage banker collected a 4% discount. The F.H.A. insured value rates were as follows:
- 97% of the first \$15,000
90% of the next \$5,000
75% of the balance, not to exceed \$27,500
- Because the owner is not going to live in the property, he can borrow only 85% of the amount which he could borrow if he did occupy the property. How much discount will the borrower have to pay (in dollars and cents) ?
- A. \$768.83
148. Q. Lawrence leased a storeroom to Davis on a percentage basis. The lease calls for a minimum monthly rental of \$400 plus 5% of the gross yearly business over \$80,000. How much rent would Lawrence receive yearly from Davis, if Davis did a gross business of \$120,000 ?
- A. \$6,800.00
149. Q. A 6,400 square foot hillside lot is to be subdivided and sold. One-fourth of the lot is too steep to be useful and $\frac{3}{16}$ of the lot is taken up by a small stream. The remaining area is flat. If $\frac{1}{8}$ of the usable area is reserved for roads, how many square feet of usable area are left ?
- A. 3,150 sq. ft.
150. Q. A lot measuring 100 feet wide and 330 feet deep would be approximately what fraction of an acre?
- A. $\frac{3}{4}$ acre
151. Q. There is a close relationship between the monthly rent obtainable for a property and the price the property will bring on the market. In an area that was beginning

- to run down, properties on the average were selling for 92 times their monthly rent. In a newer district they were selling for 112 times the rent. If a property had a monthly rental of \$95 per month, what would it be worth in each of the areas?
- A. \$8,740 in older district; \$10,640 in newer district
152. Q. A man purchased a lot for \$2,000. He built a house on the lot which cost \$14,500. During the construction period, he had several offers to rent the property for \$125 per month. Six months after he moved in, the city condemned 15 feet of the front of the lot for widening the street to speed up traffic. In attempting to rent the house, he found that the best offer was \$110 per month. By investigation we find that the current capitalization rate is 6%.
- a. What type of depreciation has this property suffered ?
- b. By capitalizing the loss of income, what is the amount of loss in value?
- A. a. Economic depreciation
- b. \$3,000
153. Q. Assuming that Mr. Davis has \$13,500 invested in his property, what will be the net return on his investment (in percentage) per year if he rents his property for \$150 per month and if the yearly cost for taxes is \$396; for insurance \$66; and for miscellaneous expense \$123 ?
- A. 9%
154. Q. An office building has a total income of \$53,200 per year. The yearly expenses are: Taxes, \$8,925.25; Insurance, \$1,510.60; Heating and Air-conditioning, \$4,920.05; and Miscellaneous Expense, \$3,644.10. If the owner values the building at \$360,000, what will be his net return?
- A. \$34,200
155. Q. Cooper sold two vacant lots for a total of \$11,389, which was 15 per cent more than he paid for them three years ago. During the time he owned the lots, he paid taxes each year at the rate of 48 mills on the assessed valuation of 45 per cent of his purchase price. If he figures a yearly interest loss of $3\frac{1}{2}$ per cent on his original investment, what was his profit or loss?
- A. \$195.53 loss
156. Q. A lot is 50 feet front by 180 feet. The owner, John Davis, had only \$5,000 cash. The lot cost \$63 per front foot, and the house cost was \$9,216. He secured a mortgage for the balance. If his interest was $5\frac{1}{2}$ per cent per annum, payable semi-annually, what was the amount of his first semi-annual interest payment ?
- A. \$202.57
157. Q. The above owner, Davis, decided to build a fence around his original lot. The cost of the fence was 80¢ per linear foot excluding gates at the front and rear of the lot. These gates are $3\frac{1}{2}$ feet wide and cost \$16.75 each. What is the total cost of the fence including the gates?
- A. \$395.90
158. Q. Davis next decides to construct a driveway. Concrete costs \$13.50 per cubic yard and labor costs are 20¢ per square foot. What will be the total cost of the driveway which is 36 feet long, 8 feet wide and 3 inches thick ?
- A. \$93.59
159. Q. A loan made April 17 is repaid June 26. For how many days should the interest be calculated ?
- A. 69 days
160. Q. Jim Underwood and John Davis traded properties. Underwood's property was valued at \$14,250. Davis' property was valued at \$17,350. The difference in equities was \$2,015.07. Underwood's equity was \$4,901.25. His equity is greater than Davis' equity. What was the total amount of encumbrance against each property?
- A. Underwood \$9,348.75
- Davis \$14,463.82
161. Q. How many cubic yards of gravel would be needed to fill a trench 36 feet long, 9 feet wide and 18 inches deep?

- A. 18 cubic yards
162. Q. J. R. Brady pays \$125 a month rent. He could buy the property for \$9,800. He has \$2,000 in his savings account earning 2% per year, compounded semi-annually; fire insurance premium is \$22.50 per annum; taxes are \$146.40 annually; upkeep is $1\frac{1}{2}\%$ of property cost; and depreciation is 2% of the property cost. He could borrow the remainder of the purchase price at $4\frac{1}{2}\%$ interest per year.
(a) What would be the total cost of owning the house the first year?
(b) What would he save by owning instead of renting?
- A. (a) \$903.10
(b) \$556.70
163. Q. Charles Walker has purchased a lot for \$9,000. It has a frontage of 100 feet and contains one-half acre of land. Ascertain what the lot cost: (a) per front foot; (b) per square foot; (c) what it would cost per acre; (d) what is the depth of the lot?
- A. (a) \$90. (b) 41 cents. (c) \$18,000. (d) 217.8 feet.
164. Q. If building costs are \$12.50 per sq. ft. and you build a house 33' wide \times 48' long, with an offset for a game room of an additional 6' \times 20', how much would it cost to build the house?
- A. \$21,300
165. Q. If $5\frac{1}{4}\%$ is the annual rate of interest and the monthly interest payment is \$58.45, what is the amount of the original loan?
- A. \$13,360
166. Q. A broker is sub-dividing a $4\frac{1}{2}$ acre tract into 50' \times 100' lots. After allowing 71,020 square feet for the necessary streets, into how many lots can the tract be divided?
- A. 25 lots
167. Q. There is a balance of \$7,500 due on a land purchase contract that requires monthly payments of \$60.00 plus interest at 6% per annum, payable monthly. What would be the total payment for the 1st, 3rd and 5th months?
- A. \$97.50; \$96.90; \$96.30
168. Q. What would be the F.H.A. insurable loan on a dwelling if the F.H.A. insured 97% of the first \$13,500 of valuation and 85% of the remainder and the F.H.A. valuation is \$18,500?
- A. \$17,345
169. Q. Montgomery owns a property which gives him a gross income of \$1,600 per month. His annual expenses are 45%. What is his net income per year on the property?
- A. \$10,560
170. Q. Bennett has a principal balance of \$6,000 on his mortgage. His interest rate is 5% per annum. His taxes and insurance total \$108 per year. His monthly payment is \$60, covering interest, taxes, insurance, and the balance applied to principal. What is his principal balance after making the first payment?
- A. \$5,974
171. Q. A building has been leased to a supermart with the rent based on $1\frac{1}{2}\%$ of the gross sales, with a minimum rental of \$10,000 annually.
(a) If its first year sales were \$600,000, how much rent was paid?
(b) If its fourth year sales were \$1,000,000, how much rent was paid?
- A. (a) \$10,000
(b) \$15,000
172. Q. A property is worth \$16,000 and the furniture and household effects are worth \$5,600. The owner insures them at 72% of their value. The annual rate on the dwelling is \$3.10 per \$1,000 and \$3.65 on the personal property. If the premium for a 3-year policy is $2\frac{1}{2}$ times the premium for one year, how much can the owner save by taking out a 3-year policy?
- A. \$25.21
173. Q. What is the annual interest rate on a \$6,000 loan when the interest payments are

- \$105 semi-annually on the full amount ?
- A. $3\frac{1}{2}\%$
174. Q. \$25 is 5% of what amount ?
- A. \$500
175. Q. How many square feet are there in $2\frac{1}{2}$ acres?
- A. 108,900 square feet
176. Q. A 28-acre farm was sold at \$157.50 per acre. The broker's commission was 6%. The salesperson making the sale received 60 percent of the commission. How much did the salesperson receive?
- A. \$158.76
177. Q. If the semi-annual interest payment is \$654.50 on a mortgage of \$15,400, what is the interest rate?
- A. $8\frac{1}{2}\%$
178. Q. An owner lists a property with a broker, under an agreement that the owner will receive \$16,500 for the property. The owner agrees to pay the broker a 6% commission. What will be the selling price?
- A. \$17,553.19
179. Q. If 24 acres of land cost \$3,600, what would $87\frac{1}{2}$ acres cost?
- A. \$13,125
180. Q. What is the amount of quarterly interest on a \$12,000 loan at 8% interest per year?
- A. \$240
181. Q. Add:
- | | | | |
|----|----------------|------------|--------------|
| | (a) 46,329 | (b) 267.00 | (c) 396.87 |
| | 5,271,743 | 1,109.87 | 1,875.29 |
| | 3,243 | 4,854.27 | 209.01 |
| | 17,874 | 26.77 | 7,365.54 |
| | <u>620,734</u> | | <u>68.58</u> |
| A. | 5,959,923 | 6,257.91 | 9,915.29 |
182. Q. The loan on a property is 65% of its appraised valuation. If the interest rate is 5% and the first semi-annual interest payment is \$167.50, what is the appraised value of the property?
- A. \$10,307.69
183. Q. John Kane, salesman, is working on a 50-50 split commission with his employer broker, L. Fairchild. Kane sells a 280-acre farm at \$105 per acre. The commission schedule calls for 5% on the first \$15,000; $3\frac{1}{2}\%$ on the next \$10,000 and 2% on the balance. Kane must pay another salesman, Paul Stark, who listed the property, 10% of his share of the commission. What is the net amount Kane will receive?
- A. \$534.60
184. Q. There is a balance of \$12,000 due on a real estate contract that requires monthly payments of \$120, plus interest, at 5% per annum, payable monthly. What would be the total monthly payments for the first month, third month, fifth month ?
- A. First month—\$170; third month—\$169; fifth month—\$168
185. Q. A salesman brings in a listing on a \$5,000 home and is to receive 10% of the total 5% commission when the property is sold. If a second salesman sells the house and the 10% is deducted from his half of the commission, the second salesman would receive how much ?
- A. \$100
186. Q. The assessed value of all property in the city of Uranium is \$12,000,000. The city budget is \$600,000. Your property is assessed at \$40,000. What taxes would you pay?
- A. \$2,000
187. Q. A broker receives half the first month's rent for leasing an apartment and 5% of each month's rent thereafter for collecting the rent of \$85 per month. What would

- be his total commission after 18 months?
- A. \$114.75
188. Q. The taxes on a house were \$126. The taxes were due January 1st and were paid by the owner. What refund would he get from a purchaser if he sold the house and the taxes were prorated as of September 15th?
- A. \$36.75
189. Q. The schedule of commissions for negotiating a 20-year lease was 5% for the first year, 2% for each of the next four years, $1\frac{1}{2}\%$ for each of the next 10 years, and 1% for each year thereafter. What was the total commission earned if the yearly rent was \$6,500?
- A. \$2,145
190. Q. A man has an opportunity to buy a lot for \$1,000 and a guarantee of resale value one year later of \$1,200. He also has an opportunity to lend \$1,000 to an individual with repayment within a year at 10% interest. Which is the better investment and by what amount?
- A. The lot by \$100
191. Q. A man borrows \$1,000 for 9 months at 5% per year. What amount does he have to repay?
- A. \$1,037.50
192. Q. A man borrows money for 6 months at 6% payable in advance. How much must he borrow in order to have \$1,000 cash immediately?
- A. \$1,030.93
193. Q. A lending institution advertises that it has no hidden charges or costs—that the charge on loans is simply 3% on the unpaid balance each month. If a man borrows \$120.00 and pays \$10.00 plus interest each month, what is the actual rate of interest paid for the year?
- A. $19\frac{1}{2}\%$
194. Q. If a man receives \$525.00 at the end of 6 months on money invested at 6% per year, how much has he invested?
- A. \$17,500
195. Q. A real estate broker receives 5% commission for selling a house for \$16,800. How much did the salesman receive? How much did the owner receive?
- A. \$840, broker received; \$15,960, owner received.
196. Q. If property is assessed at \$14,000 and the tax rate is \$21 per \$1,000 of assessed valuation, how much will the tax be?
- A. \$294.00
197. Q. A man borrowed \$1,500 which he agreed to repay at $5\frac{1}{2}\%$ interest a year. He paid \$25 interest; how long did he keep the money?
- A. 3 months 21 days
198. Q. A construction company developing a new shopping center borrowed \$2,000,000 repayable in 5 years. If \$550,000 interest was paid, what was the rate of interest?
- A. $5\frac{1}{2}\%$
199. Q. A man bought a farm for \$8,800 and sold it for \$10,000. His selling expenses were \$100.00. His profit was what per cent of the cost?
- A. $12\frac{1}{2}\%$
200. Q. If Mr. Jones had a furnished patio at the rear of his home, he could sell his property for \$15,000. Without this addition, he can get only \$14,500. If a 12' by 18' pavement 4" thick costs \$18.00 a cubic yard and labor \$1.80 per cubic yard, barbecue pit \$35.00, and furniture \$212.00, how much profit would Mr. Jones make by adding and furnishing a patio?
- A. \$200.20
201. Q. How many acres are there in the following diagram?



- A. 20 acres
202. Q. A house and lot sold for \$22,500. The transaction closed on May 15, 1974. A first trust deed and note with a balance of \$15,200 at time of closing, bearing interest at $6\frac{1}{4}\%$ per cent per annum and payments of \$100 per month, including interest, on the first day of each month, is assumed by the purchaser. Payments are current. What interest is due on the loan at the time of closing?
- A. \$39.58
203. Q. A small acreage sold for \$3,600. A cash payment of \$1,200 was made and the balance is to be paid in four equal annual principal installments plus interest. The interest rate on all deferred payments is 6 per cent. What amount will be paid in interest?
- A. \$360
204. Q. At the end of a six-month period, a borrower paid \$600 of the principal, plus the interest due, on a loan of \$2,400 at 6% interest. He made regular payments annually of \$600 plus interest due until the loan was repaid. What was his total interest cost?
- A. \$288
205. Q. Adams owns nine acres of downtown property which he listed for sale with Brown for \$78,300. Crowe would like to purchase a part of the listed property. He requires 100 feet \times 145.2 feet. Based on the listed price, what will he have to pay for this portion?
- A. \$2,900
206. Q. Ray Upton inherited \$6,500, which was $2\frac{1}{6}$ times as much as his sister Ann received. How much did Ann inherit?
- A. \$3,000
207. Q. A building burned 16 bulbs at 25 watts each, 24 hours a day, and 2 bulbs (25 watts each) burned 12 hours daily. All bulbs are used every day. What is the June electric bill if the cost is based on $3\frac{1}{2}\text{¢}$ per kilowatt-hour?
- A. \$10.71
208. Q. The perimeter of a rectangular lot is 108 yards. The length is 6 yards greater than twice the width. What are the length and width of the lot?
- A. 16 yards \times 38 yards
209. Q. Mr. Brown bought a home for \$25,000, built a swimming pool costing \$1,500 and spent \$625 on filtering and cleaning equipment. The following month he received an unexpected promotion and had to relocate in another state. If he listed his property at \$30,000, how much profit could he expect to make? What per cent would the profit be over his investment?
- A. \$2,875; 10.6%
210. Q. Mr. Gray has a \$5,000 mortgage on his summer home. He makes quarterly payments of \$300.00 plus 6% annual interest on the balance. How much did he pay for the first year including interest?
- A. \$1,473
211. Q. A man has an option of buying a house for \$21,000 cash or for \$1,000 down and three annual payments of \$7,000. If his money realizes 5% compounded annually, which is the better plan and by how much, if he pays another \$1,000 at closing?

- A. The payment plan by \$85.00
212. Q. A man can buy a house for \$12,500 cash or for \$4,000 down and \$9,000 at the end of the year. If his money is invested at 5% compounded semi-annually, which plan should he follow? Why?
- A. Pay \$12,500 cash because his money cannot earn the \$500 difference in one year.
213. Q.

	(a) Add:	(b) Subtract:	(c) Multiply:
	\$756.32		
	827.56		
	432.47		
	761.33	\$981,876.03	\$41,986
	<u>532.45</u>	<u>-897,439.98</u>	<u>× 499</u>
A.	\$3,310.13	\$ 84,436.05	\$20,951,014

214. Q. A salesman sells a property for \$5,800. His contract with the broker is 60% to the broker and 40% to salesman. The sales commission with the owner is 5%. What is the broker's share of the commissions?
- A. \$174
215. Q. You are employed as a salesman by Henry Bowen and Co. It is agreed that all commissions collected by the office on sales made by you are to be divided as follows: 10% to the sales manager and the balance to be divided equally between your employer and yourself. You close a deal on which the sales price is \$8,500 and the office collects a 5% commission on the sales price. What amount of commission is due you?
- A. \$191.25
216. Q. A note is dated April 15, 1977, the amount of the note is \$1,700; the interest rate is 5%; interest is payable quarterly; none of the interest is paid. How much interest will be due on January 15, 1978?
- A. \$63.75
217. Q. The value of a frame house at the end of 6 years was estimated to be \$7,650. What was the original cost of the house if the yearly rate of depreciation was $2\frac{1}{2}\%$?
- A. \$9,000
218. Q. The commission rate for selling an apartment house was 5% of the first \$10,000 and $2\frac{1}{2}\%$ for all over that amount. The broker received a commission of \$730. What did the property sell for?
- A. \$19,200
219. Q. In a contract for the sale of real estate, the sales price is fixed at \$5,800. Of this amount \$1,600 is paid down at the time of sale, and the balance is payable in monthly installments of not less than \$30 each, in addition to which the buyer pays the accrued interest. The contract is dated January 2, 1971; the first principal payment is due February 1, 1971. Assuming that all payments are made regularly and not more than \$30 is paid on principal on any installment date, state when the contract will be paid out in full.
- A. September 2, 1982
220. Q. The real value of a certain property is \$6,000. It is assessed at 60% of its real value. It is taxed at the rate of 55 mills on the assessed value. What are the taxes?
- A. \$198
221. Q. A broker sold a lot 60 ft. by 120 ft. at the price of 10 cents per square foot, but the purchaser assumed a paving lien of \$2.50 per front foot. What price would the purchaser have to ask for the lot if he wanted to sell at a profit of \$150 and give clear title to the lot?
- A. \$1,020
222. Q. Subtract:

- (a) 2,869,520
-190,274
2,679,246

(b) 5,214.21
-4,697.18
517.03

(c) 8,476,521
-3,728,906
4,747,615
- A.
223. Q.

The tax schedule on real estate in the City of Sun Valley is 22 mills, school tax 30 mills, and county tax is 12 1/2 mills. Gerold's property was purchased in 1974 for \$30,000. The tax rate is 50% of market value. What taxes will Gerold pay?
- A.

\$967.50.
224. Q.

Multiply:
- (a) \$ 41986
×499
377874
377874
167944
20,951,014

(b) 7.24
×38.7
5068
5792
2172
280.188

(c) .731
×64.3
2193
2924
4386
47.0033
- A.
225. Q.

A property is assessed at two-thirds of its market value. The property was purchased on June 16, 1974 at \$18,000. The tax is 42 1/4 mills. What is the annual amount of tax?
- A.

\$507
226. Q.

Divide:
- 6747.19
951) 6416582
5706
7105
6657
4488
3804
6842
6657
1850
951
8990
8559
431

2159.37
.1152) 248.7612
2304
1836
1152
6481
5760
10812
10368
4440
3456
9840
8014
826
227. Q.

(a) How much would it cost, per parking space, to develop a parking area, each space to be 10 ft. × 20 ft. in an area 250 feet front and 200 ft. deep, if asphalt costs 60 cents per square foot to install, curb and gutters are to be installed only across the frontage at a cost of \$5.00 per linear foot, and lighting costs \$5,000?

(b) How many parking units will the area contain?
- A.

(a) \$145

(b) 250 parking spaces
228. Q.

Haines received \$31,150 for his property, after paying a 5 per cent commission. What was the selling price?
- A.

\$32,789.47
229. Q.

What would be the appraisal value of a 3-year old ranch house, 28 ft. × 40 ft., using the cost approach, if replacement cost is \$15 per square foot, allowing 2 1/2 per cent annual depreciation?
- A.

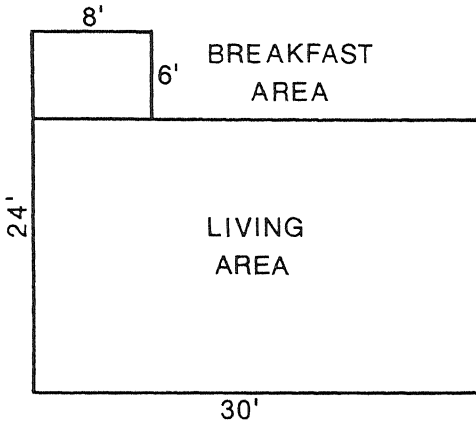
\$15,540
230. Q.

A six-unit apartment building has a gross income of \$1,500 per month. Annual expenses, excluding depreciation, are \$7,200. Allow 5% for vacancy and uncollected

rent. A prospective buyer desires an 8 per cent, overall, return on his investment. What price should he offer for the property?

- A. \$123,750

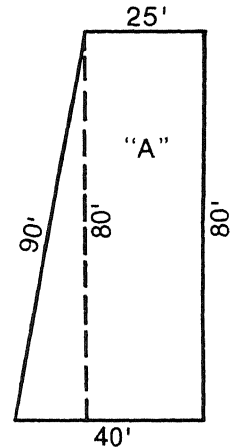
231.



- Q. The living area was built at a cost of \$16 per sq. ft. and the breakfast area at a cost of \$14 per sq. ft. If the current reproduction cost is \$18 per sq. ft. for the living area and \$16 per sq. ft. for the breakfast area, what is the increased cost per square foot in 1974?

- A. \$2.00

232. Q. What is the square foot area for entire tract "A"?



- A. 2600 square feet

233. Q. An apartment building cost the owner \$110,000. It contains 12 units, each of which rent for \$110 monthly. Excluding depreciation, annual expenses are \$3,625. What is the owner's rate of return?

- A. 11.1 per cent.

234. Q. What is the interest at 6% per annum on an \$8,000 loan for 80 days?

- A. \$105.60

235. Q. If the monthly interest rate at 8% is \$90, what is the amount of the loan?

- A. \$13,500

236. Q. Divide the fraction $\frac{7}{8}$ into the decimal equivalent.

- A. .875

237. Q. A tract of land is 90 feet by 90 feet. Adams owns one-half of the tract. How many square feet in the Adams' tract?

- A. 4,050 sq. ft.

238. Q. Assume that a buyer of real estate, as part of the purchase price, gives back to the seller a mortgage for \$20,000, bearing interest at the rate of 4% per annum. The principal of the mortgage is to be repaid in installments of not less than \$500 each, plus the interest accrued at the time of payment of each installment. The mortgage is dated December 1, 1977 and the first installment is due March 1, 1978. What sum will be due on the mortgage on March 1, 1978?

- A. \$700

239. Q. On September 1, 1977, you gave your note bearing said date to a mortgage company in which you promised to pay \$2,000 in monthly installments of not less than \$35 each inclusive of interest at 6% per annum on the monthly balances of the note. Each payment as made is applied (1) to accrued interest and (2) to reduction

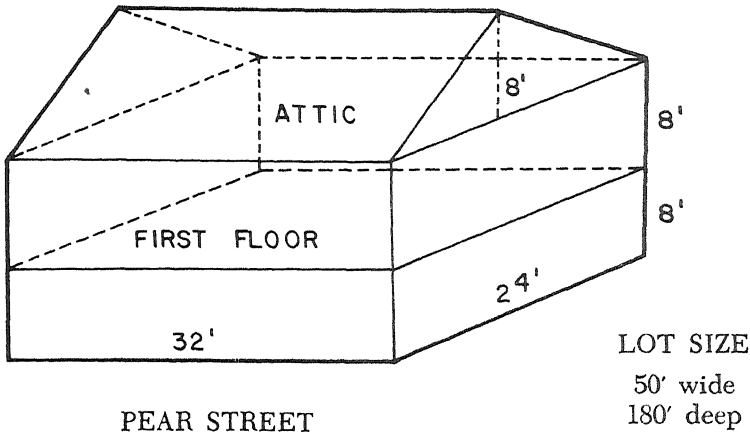
of the principal of the note. You make only the following payments:

October 1, 1977	\$35
November 1, 1977	\$60
December 1, 1977	\$45

On January 1, 1978 (a) how much have you paid as interest ? (b) What is the unpaid balance of the note?

- A. (a)\$29.49 (b)\$1,898.94
240. Q. Taxes on a parcel of property are \$1,325.28 for the current year. The first one-half of the taxes were paid by the seller. The deal will be closed as of December 15. In prorating the taxes, how much should be charged the seller for his share?
- A. \$607.42
241. Q. A man has property which gives him a gross income of \$325 per month. His monthly expenses average \$155 per month. What is his net income per year on the property?
- A. \$2,040
242. Q. Figure the cost of a tract of land 250 ft. frontage by 750 ft. in depth, at a cost of \$950 per acre.
- A. \$4,088.80
243. Q. The selling price of a certain property is \$13,000. The sale can be financed if the buyer can pay 18% down, plus a loan commission of 1.5% of the loan. How much money must the buyer have to pay the down payment and loan cost?
- A. \$2,499.90
244. Q. A tract of land 65 ft. wide and 150 ft. deep sold for \$1.25 per sq. ft., plus \$10 for each front foot. What was the price of the land?
- A. \$12,837.50
245. Q. A piece of property 326.7 feet long and 200 feet wide is for sale. The owner wants \$5,000 an acre. What is the selling price?
- A. \$7,500
246. Q. A certain commercial property was a two-story structure. It measured 46' \times 80'. The height of the first story was 16' and the second was 14'. The estimated unit cost of reproduction is eighty cents per cubic foot for the first story and sixty cents per cubic foot for the second story. What is the estimated reproduction cost of this building?
- A. \$78,016
247. Q. The length of the south side of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of a section is how many feet?
- A. 1,320 feet
248. Q. What would be the cost to build a driveway 36 feet long, 9 feet wide, and 4 inches thick if concrete costs \$15 per cubic yard and labor costs are twenty cents per square foot?
- A. \$124.80
249. Q. An investor paid \$36,000 for a four-unit apartment house. Each apartment rents for \$85 per month. It is estimated that by good management a profit of 45% of gross rentals could be made. What rate of return should this man make on his investment?
- A. 5.1%
250. Q. How many acres are there in the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of a section?
- A. 20 acres

251.



The house shown in the diagram was built by Mr. Brown on a lot 50 feet by 180 feet. This is a one-story house, with basement and expansion attic. The house faces south and fronts on Pear Street. The following 15 questions are based, at least partially, on the diagram.

- Q. What is the total cubic content of the house, including attic and basement?
A. 15,360 cubic feet
252. Q. What is the building cost of the house per square foot of main floor space if the cost of the house, exclusive of the lot, was \$10,828.80?
A. \$14.10
253. Q. The assessed valuation of the 50-foot lot was \$44 per front foot. The house was assessed at \$6,500. The tax rate is 48 mills. What are the yearly taxes?
A. \$417.60
254. Q. Mr. Brown had only \$6,500 cash. The lot cost \$65 per front foot, and the house cost was \$10,828.80. He secured a mortgage for the balance. If his interest was 5% per annum, payable semi-annually, what was the amount of his first semi-annual interest payment?
A. \$189.47
255. Q. Mr. Brown received two bids for the construction of the house. The bid from "A" was for 77 $\frac{1}{2}$ ¢ per cubic foot for the main floor, basement and attic. The second bid, from "B," was for \$4.70 per square foot of floor area for the main floor, basement and attic. Which was the lower bid? How much lower?
A. "B"; \$1,075.20 lower
256. Q. If the house cost \$10,828.80 to build, and depreciated an average of 2% each year, what would be the value of the entire property at the end of ten years, if, in the meantime, the 50-foot lot had increased in value 22% above its original cost of \$65 per front foot?
A. \$12,628.04
257. Q. Mr. Brown paid \$65 per front foot for his lot. He paid \$10,828.80 to the building contractor and paid the architect 5% of the building cost. He then placed a mortgage on the property for three-fourths of the total cost. What was his equity in the property, after he placed the mortgage?
A. \$3,655.06
258. Q. Mr. Brown decided to build a fence around his original lot. The cost of the fence was 85¢ per linear foot excluding gates at the front and rear of the lot. These 4-foot gates cost \$21.75 each. What is the total cost of the fence including the gates?
A. \$427.70
259. Q. Concrete costs \$14.25 per cubic yard and labor costs are 27¢ per square foot. What

- will be the total cost of Mr. Brown's driveway which is 36 feet long, 6 feet wide and 4 inches thick ?
- A. \$96.32
260. Q. Assuming that Mr. Brown has \$14,000 invested in his property, what will be the net return on his investment (in percentage) in 1978, if he rents his property for \$155 per month and if the yearly cost for taxes is \$402; for insurance \$78; and for miscellaneous expense \$260 ?
- A. 8%
261. Q. The monthly payments on the mortgage referred to in Question 257 above are \$75 including interest at 6% per annum on the unpaid balance. All payments are due and payable on the 10th day of each month. If the first monthly payment was made on May 10th of this year and if all subsequent payments have been made when due, what would be the principal balance after making the June payment this year?
- A. \$10,924.74
262. Q. Mr. Brown paid \$65 per front foot for his original lot. He later decided to enlarge the original lot and can buy adjoining land to the east at a price of \$1.50 per square foot. He wants to limit his total investment in land to \$7,300. How many square feet will there be in his entire lot after he buys the additional land ?
- A. 11,700 sq. ft.
263. Q. Mr. Brown owned a lot immediately to the west of his original lot. He sold this extra lot for \$4,250 net after paying the commission. He had owned the lot for 5 years and during that time he had paid taxes on it at the rate of \$42.25 per year per \$1,000 of assessed valuation which was 55% of the original purchase price of \$3,100. If you figure an annual 4% interest loss on his original investment, did Mr. Brown make a profit or take a loss on this transaction?
- A. Profit, \$169.82
264. Q. Mr. Brown has purchased a $1\frac{1}{2}$ -acre hillside lot at the rear of his original lot which he intends to sell for building purposes. One-fourth of the lot is too steep to be useful and one-third of the lot is taken up by a small stream. The remaining area is flat. If one-sixth of the usable area is reserved for roads, how many square feet will be left for building purposes?
- A. 22,687.5 sq. ft.
265. Q. Don Duncan, a salesman, is working on a 50-50 split commission basis with your firm. He sells Mr. Brown's property for 15% less than the listed price of \$17,000. The commission schedule of your firm calls for 6% on the full selling price. Duncan must pay another salesman, Roy Rayer, 20% of his share of the commission. What is the net amount Duncan will receive for the sale?
- A. \$346.80
266. Q. What is the annual interest rate on an \$8,000 loan when the interest payments are \$100 per quarter on the full amount ?
- A. 5%
267. Q. A property sold for \$50,000 with a down payment of 15%. The first mortgage (Deed of Trust) for the balance is payable at \$7.50 per thousand per month, including interest at $5\frac{1}{2}$ % per annum. What will be the monthly payments?
- A. \$318.75
268. Q. An investment property has averaged a net income of \$3,000 per year over the past five years. The owner has charged off adequate depreciation during the period. Assuming that 5% is a fair profit on this property, what is a reasonable estimate of the capitalized value of the property?
- A. \$60,000
269. Q. A lot 69 feet wide and 142 feet long sold for \$2,645.46. How much would the owner receive per square foot ?
- A. Twenty-seven cents
270. Q. A broker sells a $50' \times 100'$ lot for 75¢ a square foot. If the sales commission is 5%,

- how much does the seller receive?
- A. \$3,562.50
271. Q. What is the annual rate of interest on a \$4,200 loan when the quarterly interest payments are \$57.55 ?
- A. $5\frac{1}{2}\%$
272. Q. A farm of 60 acres, listed for sale at \$150 per acre, was finally sold for \$7,650 on condition that the purchaser pay the 10% commission of the sale price. How much did the buyer save below the list price?
- A. \$585
273. Q. A seller paid his 1978 taxes in the amount of \$300. He sells the property on March 15, 1978. He should receive a tax refund from the buyer in what amount ?
- A. \$237.50
274. Q. Brown leases a storeroom to Smith on a percentage basis. The lease calls for a minimum monthly rental of \$300 and 5% on the gross yearly business over \$80,000. How much rent would Brown receive yearly from Smith if Smith did a gross business of \$120,000 ?
- A. \$5,600
275. Q. A lot 86 feet wide and 110 feet deep sold for \$7,095. What was the price per front foot ? Per square foot ?
- A. \$82.50 per front foot
\$.75 per square foot
276. Q. You have determined that there are 1,600 square feet in a house, and the garage is $20' \times 30'$. The cost of the building of the house is \$11 per square foot and \$4 per square foot for the garage. The 50-foot lot on which the house is located costs \$15 per front foot. What is the total cost of the house, garage, and lot ?
- A. \$20,750
277. Q. C. D. Sloan built a house $33' 6'' \times 45' 6''$, which had an offset for the family room of an additional $5' \times 15'$. If construction costs were \$12.85 per square foot, how much would it cost to build the house?
- A. \$20,550.36
278. Q. A lot near Manor Creek has been appraised as follows: 3,250 square feet hillside area at \$0.14 a square foot; 2,000 square feet of stream area at $\$0.08\frac{1}{2}$ a square foot and 7,250 square feet of flat area at \$1.00 a square foot. If the tract is to be sold as a whole, what must the price be per square foot ?
- A. \$0.63 per square foot
279. Q. A property was sold on the basis of 5 per cent commission on the first \$10,000 of the sale and $2\frac{1}{2}\%$ per cent on the excess amount over \$10,000. The total commission was \$730. What was the selling price of the property ?
- A. \$19,200
280. Q. John Ford is building two patios. One is in the shape of a square, with 30 feet on each side. The other is in the form of a circle, with a diameter of 27 feet. Which is the larger and by how much ?
- A. a. Square
b. 327.735 square feet larger
281. Q. A room in an office building is 40 feet long, 24 feet wide and 15 feet high. How many workers should occupy the room, if 200 cubic feet of air space is allocated to each person?
- A. 72 persons
282. Q. A basement is 20 feet long, 15 feet wide. How many cubic yards of earth were removed, if the basement was dug to a depth of 9 feet ? It cost the owner \$3.40 per cubic yard of earth removed. What was the total cost ?
- A. a. 100 cubic yards
b. \$340
283. Q. Smith is building a house with dimensions of 45 feet by 25 feet and 8 feet deep. If he engages trucks capable of carrying 4 cubic yards each, how many truck-loads

- will be required in the excavation operation?
- A. 84 truck-loads
284. Q. Smith also employs a well digger, whose rate is \$9.00 for the first foot dug and an increase of \$1.25 for each additional foot dug. Before the well was fully completed, it was necessary to dig 60 feet. What was the cost of the well?
- A. \$2,752.50
285. Q. Stone has moved into a new office, measuring 15 feet by 24 feet. He purchases wall-to-wall carpet at \$14.95 per square yard; what did the carpet cost him?
- A. \$598
286. Q. Mrs. Stone has bought a new home and intends to make her own window drapes. A helpful salesman tells her there are 8 windows to be draped and each requires 2 yards of material. She purchased the material at a sale at \$3.90 per yard. What did the drapes cost her?
- A. \$62.40
287. Q. "A" is exchanging his house for a farm owned by "B." "A" agrees to allow "B," the owner of the 240 acre farm, \$60 per acre to apply on "A's" house, which is valued at \$23,500. How much cash difference will "B" owe "A"?
- A. \$9,100
288. Q. Louis Dubbs, Broker, has a property listed at \$16,000. George Adams purchases it for \$13,600 and sells it for \$16,000. What percentage profit did he make?
- A. 17.6%
289. Q. A man purchased a building for \$120,000. His gross income was \$23,000 per year and his expenses were \$11,000. What rate of return would he receive on his investment?
- A. 10%
290. Q. The 1978 taxes on a residence are \$400; the millage rate for all taxes is 40 mills. The taxing authority has assessed property at 50% of the established market value. What is the market value?
- A. \$20,000
291. Q. If an apartment building costing \$21,000 has an income of \$140 per month, what percentage would it be returning annually on the investment?
- A. 8%
292. Q. Mr. Stone has a principal balance of \$6,000 on his mortgage. His interest rate is 5% per annum. His monthly payment is \$60 for interest, and the balance applied against the principal. What is his principal balance after making his first payment?
- A. \$5,965
293. Q. The sales price of a property is \$10,000. The land value is \$1,500. What amount of fire insurance should be recommended that the buyer carry?
- A. \$8,500
294. Q. A section of land is exactly square and contains exactly 640 acres and all boundaries run exactly north and south, or east and west, as the case may be, and a person buys all land in the section lying southwesterly of a line which crosses the section and running north 45° west, at \$1,250 per acre, cash on date of closing. What amount of United States Internal Revenue stamps are necessary to be placed on the deed?
- A. No stamps are necessary. They have not been required since January 1968.
295. Q. Doe leases a storeroom to Roe on a percentage basis. The lease calls for a minimum monthly rent of \$300 and 5% on the gross yearly business over \$80,000. How much rent would Doe receive yearly from Roe if Roe did a gross business of \$140,000?
- A. \$6,600
296. Q. A farm of 60 acres listed for sale at \$150 an acre, was finally sold for \$7,650 on condition that the purchaser pay the 10% commission of sale price. How much did the buyer actually save on the transaction?
- A. \$585

297. Q. Assume that a \$9,000 fire insurance policy is dated March 1, 1977. It was issued for three years at a premium of \$158.40. What is the prorated value of the unused portion as of November 16, 1977?
A. \$121
298. Q. A 100 by 100-foot lot was assessed at \$15 per front foot and the house assessed at \$3,200. What was the total yearly tax if the rate was 40 mills?
A. \$188.00
299. Q. A small home can be rented for \$50 a month or bought for \$6,800 (\$6,200 for the house; \$600 for the lot). The annual cost of owning and living in a \$6,800 home may be computed as follows:
Interest 3%. Painting and repairs of house $2\frac{1}{2}\%$. Taxes \$24 per \$1,000 on 75% value of house and lot. Insurance \$4.50 per \$1,000 on \$6,200, the value of the house. 5% for care of lot; value of lot \$600.
How much less would it be to buy the property and live in it than to rent it?
A. \$5.05 per month. (Interest \$17; Repairs \$12.92; Taxes \$10.20; Insurance \$2.33; Lot upkeep \$2.50. Total monthly expenses \$44.95. Rent \$50 less \$44.95)
300. Q. The value of a house at the end of eight years was estimated to be \$14,400. What was the value of the house when new if the yearly rate of depreciation was $2\frac{1}{2}\%$?
A. \$18,000
301. Q. A property is assessed for \$5,000. The tax rate is \$3.50 per \$100 with 5% discount for promptness and a 5% penalty for tardiness. What three possible amounts could be paid as taxes on this property?
A. \$175; \$166.25; \$183.75
302. Q. What is three months' interest on \$566.66 at 5% per annum?
A. \$7.08
303. Q. The seller's equity in a real estate contract is \$2,160, payable in monthly installments of exactly \$45 per month, no more, no less. These installments do not include any interest. Assuming that the first payment is made October 1, 1974, and that payments are due on the first day of each month thereafter, the last payment will become due on what date?
A. September 1, 1978
304. Q. \$150 is $2\frac{1}{2}\%$ of what amount?
A. \$6,000
305. Q. How many square feet are there in an acre?
A. 43,560
306. Q. The real estate broker is given a contract to manage a new apartment building consisting of eight units, at a monthly rental of \$50 each. The broker receives a commission of 5% of rents collected, as well as one-half month's rent for each apartment rented. What is the possible maximum yearly commission received if all units are rented before the building is completed?
A. \$440
307. Q. A fire insurance policy was taken out for three years dated June 1, 1976, and the premium for three years was \$36. The property was sold January 1, 1978. How would you prorate the premium?
A. Buyer would be charged \$17
308. Q. \$25 is 5% of what amount?
A. \$500
309. Q. A new house and lot cost Snyder \$14,000. Of this total price it was estimated that the lot was worth \$2,000. The owner held the property for six years. Assuming an annual depreciation of $2\frac{1}{2}\%$ on the house and an annual increase in value of 8% on the lot, what was the total value of the property at the end of six years?
A. \$13,160
310. Q. What is the gross yearly income of a property that has six apartments, two apartments paying a monthly rental of \$55 each, two apartments at \$75 monthly each,

- and two apartments at \$90 monthly each ?
- A. \$5,280
311. Q. At settlement on June 15, 1978 a purchaser assumes the existing mortgage of \$4,500 on which the interest at 5% per annum has been paid up to December 15, 1977. Prorate the amount due at settlement and state whether this item is a debit or credit to purchaser.
- A. \$112.50 which is a credit to the purchaser.
312. Q. What is the annual interest rate on an \$8,000 loan when the interest payments are \$80 per quarter on the full amount ?
- A. 4%
313. Q. The net amount received by Mr. Wheller for his property after his broker had deducted a sales commission of 4% and an allowance of \$70 for advertising was \$7,850. What was the selling price?
- A. \$8,250
314. Q. A building was sold for \$50,000. At the time of closing the deal, credit was given the purchaser for a \$20,000 first mortgage and a \$7,000 second mortgage. What amount of Federal documentary stamps was placed on the deed in 1967 ?
- A. \$25.30
315. Q. After making proper deductions for expense of operation there is left a net income of \$1,800 a year. What percentage of income is this on a purchase price of \$20,000 ?
- A. 9%
316. Q. A lot of 55 feet frontage and 100 feet depth has been sold at \$35 per front foot. Compute your commission at 10% of the selling price.
- A. \$192.50
317. Q. Alfred Sims bought a lot for \$1,000. He sold it for \$1,300 at the end of three years, having paid \$25 taxes on it for each year. What is his profit counting lost interest of 2% on his investment each year as an expense?
- A. \$165
318. Q. A house valued at \$10,000 was insured against fire for 80% of the value. The rate was \$.60 per \$100 for a three-year period. How much was the premium for one year?
- A. \$16
319. Q. A property is assessed at \$5,800. The school tax rate is \$1.55 per \$100 of assessed valuation. What is the amount of the school tax on the property?
- A. \$89.90
320. Q. What would a business be worth which shows a profit of \$275 a month and is earning 8% on the total investment ?
- A. \$41,250
321. Q. What is the total income of a business for the month of October which does a gross average of \$42.50 per day including Sundays?
- A. \$1,317.50
322. Q. You bought a piece of land 200 ft. square and are erecting a house thereon, 40 ft. square and an average height, including cellar, of 30 ft. Costs were as follows: land, \$25 per front foot, and building \$.35 per cu. ft. What is the total cost excluding any other charges?
- A. \$21,800
323. Q. Green Acres Development Company divided 120 acres into 240 one-half acre lots. They then decided to make the lots each $\frac{2}{3}$ of an acre in size. How many fewer $\frac{2}{3}$ acre lots would they have?
- A. 60 fewer lots
324. Q. Adams, who has \$50,000 at 4% interest, lives in an apartment for which he pays a rent of \$200 monthly. He buys a duplex for \$50,000 and moves into one unit. Adams leases the other unit at \$250 monthly. Maintenance of the duplex costs \$2,600 per year. Did Adams profit by the deal, and if so, how much at the end of

- one year?
- A. Yes; by \$800
325. Q. The showroom of an auto dealer contains 800 square feet. Its length is twice the width and a glass window is on the long side of the building. If new cars are 8 feet wide and placed side by side with 2 feet between them, how many cars can be placed in this space facing the window?
- A. 4 cars
326. Q. A purchaser has decided to insulate his dwelling by covering the attic floor, measuring 24 feet by 32 feet, with rock wool. Each bag of rock wool will cover 36 square feet. How many bags will be required?
- A. $21\frac{1}{3}$ (22 bags)
327. Q. A lot is 40 feet wide and 75 feet deep. The entire lot has a sidewalk around it 6 feet wide and 3 inches deep. What is the total area of the walk?
- A. 1,236 square feet
328. Q. What will be a person's investment of principal, if he intends to earn an income of 6 per cent, so that he will receive \$1,800 in interest each year?
- A. \$30,000
329. Q. At the end of the calendar year, the Hope Realty Company finds it earned \$30,000. Listing fees, commissions and overriding expenses equaled 18 per cent of gross sales. What was the volume of sales for the year?
- A. \$36,585.37
330. Q. How many lots or portions of lots could you divide an acre into, if each lot is 60 feet by 120 feet, and a roadway is to be taken out, which is 30 feet wide and 200 feet long?
- A. 5.2 or $5\frac{1}{5}$ lots
331. Q. John Davis bought a lot, 50 feet by 125 feet, at \$65 per front foot. He paid \$10,828.80 to build a house, which depreciated an average of 2 per cent each year. What would be the value of the entire property at the end of ten years if, in the meantime, the lot had increased in value 22 per cent above its original cost of \$65 per front foot?
- A. \$12,628.04
332. Q. Smith paid \$65 per front foot for his lot (with a frontage of 50 feet). He paid \$10,828.80 to build and he paid the architect 5 per cent of the building cost. He then placed a mortgage on the property for three-fourths of the total cost. What was his equity in the property, after he placed the mortgage?
- A. \$3,655.06
333. Q. There are 20 fence posts, each 6.85 feet apart. How many yards from the beginning of the first post to the end of the last post, if each post is $4\frac{3}{4}$ inches wide?
- A. 46.023 yards
334. Q. A \$46,500 investment shows annual earnings of $6\frac{1}{2}\%$. What is the monthly return?
- A. \$251.88
335. Q. Mrs. Stender owns a 27-room apartment house. Five tenants pay \$17 per week; nine tenants pay \$15 per week; eight tenants pay \$16 per week; and five pay \$18 per week plus \$3.75 per week for a garage. What is the gross yearly income?
- A. \$23,751
336. Q. Mrs. Seberry purchased a piece of real estate for \$6,500. At a later date she offered it for sale through a broker's office at an increase of 30%. The property did not sell and she finally reduced the asking price by 25% and the property was sold. She paid a commission of 5% of the sale price to the broker. Did she gain or lose and by how much?
- A. Loss—\$479.38
337. Q. What is the interest on \$874 for 2 years, 8 months, 15 days at $4\frac{1}{2}\%$ per annum?
- A. \$106.50
338. Q. A mortgage company agrees to lend the owner of a property a sum equal to

- 66 $\frac{2}{3}\%$ of its appraised valuation, at an interest rate of 5%. The first year's interest is \$200. What is the appraised valuation?
- A. \$6,000
339. Q. A house sold for \$7,500 at a profit of 20%. What did the house cost ?
- A. \$6,250
340. Q. The owner of a block of 14 building lots, each with a frontage of 75 ft., desires to realize \$33,750 from the sale thereof, withholding, however, two lots for himself. What must be the sales price for the lots sold per front foot ?
- A. \$37.50
341. Q. If a tract of land comprising 108,900 square feet was sold for \$1,250 per acre, what is the total amount realized from the sale?
- A. \$3,125
342. Q. A rectangular piece of land containing an acre is $5\frac{1}{2}$ rods wide, what is the length ?
- A. $29\frac{1}{11}$ rods
343. Q. From 160 acres of land, $42\frac{1}{4}$ acres were sold to one man and $\frac{1}{3}$ of the remainder to another. How many acres remain unsold ?
- A. $78\frac{1}{2}$ acres
344. Q. A man paid \$7,888.30 for a farm containing 89 acres 90 square rods of land. What was the price per acre?
- A. \$88.08 per acre
345. Q. A farm of 100 acres is divided into house lots. The streets require $\frac{1}{8}$ of the whole farm, and there are 140 lots. How many square rods are there in each lot ?
- A. 100 square rods
346. Q. Jim Moore receives his tax bill of \$490.30. The tax rate is 42 mills per dollar. The property is assessed at 58.25% of its value. What was the actual value of the property?
- A. \$20,040.87
347. Q. A broker has $5\frac{1}{4}$ acres of land, which he is dividing into lots 60 feet wide and 100 feet deep. Allowing 36,690 square feet for the necessary streets, into how many lots could the tract be divided ?
- A. 32 lots
348. Q. The owner of a piece of land 500×350 ft. laid a sidewalk and curb around the entire lot, placing the curb along the lot lines. Sidewalk cost \$3,200 and curb \$2.00 a lineal yard. What was the total cost ?
- A. \$4,333.33
349. Q. If you bought a house for the listing price less 20% and sold it for the listing price, what per cent profit would you make?
- A. 25%
350. Q. Compute the interest on \$3,120.50 from November 1, 1976 to May 1, 1978, at $5\frac{1}{2}\%$ per annum.
- A. \$257.44
351. Q. If 16 acres of land cost \$720, what will 197 acres cost ?
- A. \$8,865
352. Q. How many acres are there in a parcel of land 600 feet \times 300 feet ?
- A. 4.13 plus
353. Q. The net amount received by a seller for his property, after the broker had deducted a sales commission of 5% and an allowance of \$40 for advertising, was \$9,080. What was the selling price?
- A. \$9,600
354. Q. McDevitt has a principal balance of \$6,000 on his mortgage. The interest rate is $5\frac{1}{2}\%$ and taxes and insurance payments total \$108 per annum. His monthly payment is \$60. What is his principal balance after making the first payment ?
- A. \$5,976.50
355. Q. Compute the cost of excavation for a cellar 25 feet wide, 30 feet long and 5 feet

- deep at \$2.90 per cubic yard.
- A. \$402.75
356. Q. What would the quarterly interest payment amount to on a \$6,000 loan calling for simple annual interest at $5\frac{1}{2}\%$?
- A. \$82.50
357. Q. Ray Dolan bought a square piece of land comprising 10,000 square feet. He is building a house on it 45 feet square and of an average height including basement of 30 feet. His costs were \$25 per front foot for the land and \$.35 per cubic foot for the dwelling. What is the total cost ?
- A. \$23,762.50
358. Q. A lot 75 feet wide and 165 feet deep sold for \$193.50 per front foot. What was the selling price of the lot ?
- A. \$14,512.50
359. Q. How many acres of land are there in a section?
- A. 640 acres
360. Q. How many sections comprise a township?
- A. 36 sections
361. Q. What is the area of a square-acre lot in terms of feet on each side?
- A. 208.7 feet on each side
362. Q. In a 12-unit apartment building, three units rented for \$100 each per month, two units for \$125 each per month, and one unit for \$150 per month. The other six units rented for \$65 each per month. What was the gross annual income?
- A. \$13,080
363. Q. What would a property be worth if the net return is \$950 per month, and the yearly earning is to be 8% on the investment ?
- A. \$142,500
364. Q. How many acres in the south half of the north half of the southwest quarter of Section 9 of Township 24, range 42 E.W.M., Spokane County, Washington?
- A. 40 acres
365. Q. A plot of ground is a rectangle with a frontage of 760 feet and a depth of 500 feet. How many acres does it contain?
- A. 8.72 acres
366. Q. A business property valued at \$10,000, to earn 16% on the total investment annually, should return a monthly income in what amount ?
- A. \$133.33
367. Q. What factors are to be considered in determining the tax rate?
- A. Assessment and tax millage.
368. Q. On a section chart, how many acres would be in the following descriptions:
- (a) NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$?
- (b) NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$?
- A. (a) 10 acres
- (b) $2\frac{1}{2}$ acres
369. Q. A building is insured for \$24,500. The annual rate is \$.16 per \$100 and the owner buys a three-year policy, the rate of which is $2\frac{1}{2}$ times the annual rate.
- (a) What is the monthly cost ?
- (b) What is the total premium?
- A. (a) \$2.72
- (b) \$98
370. Q. A percentage lease calls for a minimum rent of \$300 per month and 4% of the gross business over \$150,000. If the total rent paid at the end of the year was \$4,800, how much business did the tenant do during the year?
- A. \$180,000
371. Q. A real estate deal is closed as of April 15, 1978. The city taxes amount to \$180. They have been paid. The school taxes in the amount of \$240 are also paid. The

- county taxes amounting to \$118 have not been paid. Compute apportionment of taxes between buyer and seller.
- A. \$263.09 buyer owes seller for taxes
372. Q. A broker has 1.87 acres of land listed with him for sale at $22\frac{1}{2}$ cents per square foot. The total selling price is how much?
- A. \$18,327.87
373. Q. A property is assessed at \$6,000. The school tax rate is \$1.55 per \$100 of assessed valuation. What is the amount of the school tax on the property?
- A. \$93
374. Q. A lot measuring 100 feet by 108.9 feet would be equivalent to what portion of an acre?
- A. $\frac{1}{4}$ acre
375. Q. If an \$8,000 home is assessed at 80% of its value and the combined tax rate is \$4.20 per \$100, what is the amount of the total annual tax?
- A. \$268.80
376. Q. What is the interest on \$8,000 at $4\frac{1}{2}\%$ per annum for nine months and fifteen days?
- A. \$285
377. Q. A man bought two 60-foot lots for \$3,000 net each, and divided them into three lots of equal frontage, which he sold for a price of \$2,400 each. What was his percentage of gross profit?
- A. 20%
378. Q. The selling price of a home was \$9,300. The broker's commission was 5% and other charges to the seller paid from escrow amounted to \$95. How much money did the seller receive?
- A. \$8,740
379. Q. If a seller wishes to trade his residence at a price of \$15,750 subject to a mortgage in the amount of \$6,240 for an apartment house costing \$62,350 subject to a mortgage in the amount of \$36,675, what would be the amount of cash difference?
- A. \$16,165
380. Q. What would be the depth of a rectangular lot containing 1,080 square yards with a frontage of 90 feet?
- A. 108 feet
381. Q. An apartment house has a gross income of \$1,134 per month with annual expense of \$2,500. What price would a buyer pay for the building to show a net return of 8% on his investment?
- A. \$138,850
382. Q. A broker sold a lot 125 feet wide and 160 feet deep for 17 cents per square foot, but the purchaser assumed a paving lien of \$2.25 per front foot. What total amount would the purchaser have to ask for the property if he expected to make a profit of \$295 and give a clear title to the property?
- A. \$3,976.25
383. Q. The commission rate for selling an apartment house was five per cent on the first \$15,000; three per cent on the next \$20,000; and $1\frac{1}{2}\%$ on the balance. The broker received a commission of \$1,710. What was the selling price of the property?
- A. \$59,000
384. Q. A lot 65 feet wide and 150 feet deep sold for \$7,670. What was the price per front foot?
- A. \$118
385. Q. Adams owns a property which gives him a gross income of \$325 per month. His monthly expenses average \$155 per month. What is his net income per year on the property?
- A. \$2,040
386. Q. What is the annual rate of interest on a \$4,200 loan, when the quarterly interest payments are \$57.75?

- A. $5\frac{1}{2}\%$
387. Q. The owner of a farm employs a licensed broker to sell his farm and agrees to pay a commission of 5%. There is a mortgage on the farm dated June 1, 1975, in the amount of \$3,000, with interest at 5% per annum, which the purchaser is assuming. Two payments of \$250 each have been made on the mortgage. The owner has paid the interest on the mortgage to June 1, 1978. The sales price is \$8,750, and the date of closing is June 30, 1978.
- (a) What is the amount of commission due the broker?
- (b) What is the amount of mortgage interest owed by the seller to the buyer at the date of closing?
- (c) Assuming that the seller had paid the annual taxes of \$136 in full for the year ending December 31, 1978, what is the amount of tax adjustment due the seller by the buyer?
- A. (a) \$437.50 (b) \$10.42 (c) \$68.00
388. Q. A property is worth \$12,000, and the furniture and household goods are worth \$4,000. The owner insures them for 80% of their value. The annual rate on the dwelling is \$2.80 per \$1,000, and on the furniture and household goods, \$3.30 per \$1,000. If the premium for a three-year policy is $2\frac{1}{2}$ times the premium for one year, what savings would be effected by purchasing a three-year policy?
- A. \$18.72
389. Q. If Dan Clure purchased an apartment building for \$40,000 and the total amount of rents received was \$6,000 annually, and annual expenses totalled \$2,000, what per cent does his investment pay?
- A. 10%
390. Q. A sale of real estate is closed on September 12, 1977. The county taxes for 1976 were \$875.24, which have not yet been paid, so they will be paid by the purchaser. In prorating these taxes for the calendar year, what is the amount of the apportionment and will this amount be a debit or credit to the purchaser at the closing?
- A. \$612.66 which will be credited to the purchaser.
391. Q. Lawrence leased a storeroom to Davis on a percentage basis. The lease calls for a minimum monthly rental of \$400 and 5% of the gross yearly business over \$80,000. How much rent would Davis receive yearly from Lawrence, if Lawrence did a gross business of \$120,000 in 1973?
- A. \$6,800
392. Q. A 40-acre grove sold for \$2,200 per acre. The profit the seller made over the cost of the property to him was 10%. What did he pay for the grove?
- A. \$80,000
393. Q. If an apartment house costing \$42,000 has a net income of \$280 per month, what per cent would it be returning on the investment?
- A. 8%
394. Q. What is the cost of a lot 264 feet wide by 660 feet deep at \$800 per acre?
- A. \$3,200
395. Q. A salesman's half of a 5% commission for the sale of a 320-acre ranch at \$175 an acre would be how much?
- A. \$1,400
396. Q. A farm earns \$3,600 net after allowing for all expenses. A buyer wants 6% return on his money. What could he pay for the farm so as to net him 6% on his investment?
- A. \$60,000
397. Q. In appraising a one-story house 32×40 feet at a replacement cost of \$9.50 per square foot, and allowing 5% depreciation for one year, what would your appraisal be?
- A. \$11,552
398. Q. How many lots or portions of lots could you divide an acre into if each lot is 60×120 feet and a roadway is to be taken out which is 30 feet wide and 200 feet long?

- A. $5.21 + \text{lots}$
399. Q. If the net income from an apartment costing \$12,000 is \$100 monthly, what would the yearly percentage rate of earnings on the investment be?
- A. 10%
400. Q. A broker has a problem of subdividing a 10-acre tract into 50×100 foot lots; after allowing 85,000 square feet for the necessary streets, into how many lots could the tract be subdivided?
- A. 70.1 lots
401. Q. How many square feet of concrete would be needed to build a sidewalk 6 feet wide around the boundaries of a 60×100 foot corner lot?
- A. 996 sq. ft.
402. Q. How much would the above walk cost if you paid 23 cents per square foot?
- A. \$229.08
403. Q. By how much does the sum of 2,583 and 4,905 exceed the difference of 9,421 and 2,892?
- A. 959
404. Q. Shields purchased $W \frac{1}{2}$ of $NE \frac{1}{4}$ of section 10, T-16, R 18 E for the sum of \$250 per acre. He subdivided land into 100 lots. The cost of the development was \$6,500. Lots were sold at \$750 each. What profit did Shields make?
- A. \$48,500
405. Q. A tract of ground 30 rods by 16 rods contains how many acres?
- A. 3 acres
406. Q. A person whose income is \$325 per month should be able to purchase a home valued at $2 \frac{1}{2}$ times his annual income. What would be the value of his home?
- A. \$9,750
407. Q. A developer purchased a parcel of land 2,640 feet by 9,900 feet. How many $\frac{1}{2}$ -acre sites can be obtained in this parcel allowing 10% of the total for streets and 10% for playgrounds and 20% for a factory?
- A. 720 one-half acre sites
408. Q. What is the cost of roofing a gable-type house ($24' \times 32'$) if the roof measures 15 feet from eaves to peak and 34 feet long, if shingles cost \$.08 per square foot delivered and \$.026 per square-foot labor to apply?
- A. \$108.12
409. Q. A lot with 50-foot lake frontage and 150 feet deep sold for \$7,500. What was the price per square foot? What was the price per front foot?
- A. \$1.00 per sq. ft. \$150 per front foot
410. Q. Of a certain farm, $\frac{1}{6}$ is in pasture, $\frac{5}{8}$ is under cultivation, and the remainder in woodland. If the woodland is 50 acres, how many acres are there in the whole farm?
- A. 240 acres
411. Q. Kilroy sold two vacant lots for a total of \$9,430, which was 15% more than he paid for them four years ago. During the time that he owned the lots, he paid taxes each year at the rate of 45 mills on the assessed value of 60% of his purchase price. Figuring a 3% yearly interest loss on his original investment as an expense, did he gain or lose on the sale? In what amount?
- A. \$639.60 loss
412. Q. How many square rods in an acre?
- A. 160 sq. rd.
413. Q. A lot near Magic Springs has been appraised as follows: 3,250 square feet of hillside at 14¢ a square foot; 2,000 square feet of stream area at $8 \frac{1}{2}\%$ a square foot; and 7,250 square feet of flat area at \$1.00 a square foot. If the lot is to be sold as a whole, what must the price be per square foot to realize the appraised value of the lot?
- A. \$.63 per square foot
414. Q. A two-story house cost \$9,000 to build. If the house had a frontage of 30 feet, a

- depth of 30 feet and was 30 feet high, including basement, what was the cost per cubic foot ?
- A. $\$.33 \frac{1}{3}$
415. Q. A man plans to put in a driveway 30 feet long and 6 feet wide. If concrete work and labor together cost \$2.75 per square foot, what is the cost of the driveway?
- A. \$495
416. Q. A perch or rod is a unit of land measuring how many feet ?
- A. $16 \frac{1}{2}$ ft.
417. Q. How many feet in a chain?
- A. 66 ft.
418. Q. What would be the amount of interest a purchaser would have to pay for the first month on a contract balance of \$7,200 payable at \$40 per month, including interest at the rate of 6% per annum?
- A. \$36
419. Q. An investor bought 20 acres of land. He plans to divide it into $50' \times 150'$ homesite lots and leave 5 acres for streets, playgrounds and parks. How many lots will he have to sell?
- A. $87 +$ lots
420. Q. A percentage lease calls for a minimum rent of \$600 per month plus 5% of the gross business over \$115,000 per month. If the total rent paid by the end of the year was \$9,300, what was the tenant's gross volume of business for the year?
- A. \$1,422,000.00
421. Q. The assessed valuation of a house is \$10,000. If the tax rate is \$19 per \$1,000 assessed valuation, what are his taxes?
- A. \$190 taxes
422. Q. Two houses are 30 yards apart. What would the distance be (expressed in feet) if the houses were three paces closer?
- A. 81 feet
423. Q. A patio is 20 yards long and 10 yards wide. There are stones all around it, each two feet long. How many stones are needed?
- A. 90 stones
424. Q. A ranch contains 3 square miles. How many acres does it contain?
- A. 1,920 acres
425. Q. A lot is 300 feet wide, 450 feet long. A building was erected on the lot 27 feet from the front and 18 feet from the rear. The building contained 12,825 square yards. How wide was the building?
- A. 285 feet
426. Q. A salesman's commission at the end of the first year was increased one-fifth, at the end of the second year it was increased one-fifth. If the third year's commission was \$7,280, what was his commission the first year?
- A. \$5,055.56
427. Q. Neely wishes to construct a store building on the corner of Main and Edgeworth Avenues. The building is to have 8,100 square feet of ground floor space. Phillips owns lots 1 to 5, inclusive, and will sell any or all of the lots but will not cut up any of them. Each lot is 50 feet wide and fronts on Edgeworth Avenue. Each lot is 100 feet deep, parallel to Main Street. There is a 20-foot setback on Main Street lots and a 15-foot setback on Edgeworth Avenue. If the selling price of lots fronting on Main Street is \$112.50 per front foot and \$87.25 per front foot for lots fronting on Edgeworth Avenue, what will be the total investment in land required by Neely if he purchases the lots needed for the proposed building?
- A. \$19,975.00
428. Q. In the above case, how many square feet can be used for building purposes of the corner lot ?
- A. 2,550 sq. ft.
429. Q. Dolan paid \$75 per front foot for his lot which is 60 feet front and 100 feet deep.

He later decides to enlarge his lot and can buy an adjoining tract at the price of 75 cents per square foot. He wants to limit his total investments in land to \$7,500. How many square feet will he have altogether after he buys the additional tract?

- A. 10,000 sq. ft.
430. Q. Thompson and Tyler agreed to trade properties—each to assume the encumbrances on the property taken in trade and the difference in equities to be paid the party with the greater equity by paying 20% cash and the balance to be carried on a second mortgage. Thompson's property was valued at \$20,000 with a first mortgage encumbrance of \$8,555.00 and a second mortgage encumbrance of \$1,655.10. Tyler's property was valued at \$18,450.00 with a mortgage encumbrance of \$13,841.79. (a) What is Thompson's equity? (b) What is Tyler's equity? (c) Who is due the difference in equity? (d) How much of the difference will be paid in cash? (e) How much will be carried on a mortgage? (f) Against whose property will be the mortgage (after transfer of properties)?
- A. (a) \$9,789.90 (b) \$4,608.21 (c) Thompson (d) \$1,036.34
(e) \$4,145.35 (f) Tyler's property
431. Q. A buyer lacks \$250 to close a real estate deal. The seller agrees to accept a note due in one year from that date, with interest added to back of note at time of signing at 6% per annum. Eleven payments are to be made at the rate of \$16.25 per month. What will be the amount of the last payment?
- A. \$86.25
432. Q. The taxes on a certain house were \$126. The taxes were due on January 1, and were paid by the owner. What tax refund would the owner receive from the purchaser if the house were sold on March 15?
- A. \$99.75
433. Q. The assessment on a property is: \$13,300 on the building, \$1,050 on the lot. On re-assessment the assessment on the lot has been increased \$350. If the tax rate is raised 4.25 mills, what will the increased tax be on this property?
- A. \$62.48
434. Q. A property is assessed at \$12,500 and the tax rate is 32 mills. Taxes are due October 1. What refund would the owner of this property get from a purchaser if he sold the property and the taxes were prorated as of April 1?
- A. \$200.00
435. Q. A man's home is worth \$6,000 and his household goods are worth \$4,000. He insures each of them for 80% of their value. The annual rate on the dwelling is \$2.80 per \$1,000 and the rate on the contents \$3.30 per \$1,000. The premium for a three-year policy is $2\frac{1}{2}$ times the premium for one year. What is the three-year premium on the complete policy?
- A. \$60.00
436. Q. A party purchased 150 acres of land for \$15,000 thirty years ago. The tax rate has averaged 20 mills and an assessed valuation of \$50 per acre. If the property were sold now for \$300 per acre paying a 10% brokerage commission, what would the owner's net profit be?
- A. \$21,000
437. Q. Which would be the better of two offers for a lot 5 feet front and 150 feet deep, and how much better? "A" offers \$40 per front foot and "B" offers 30¢ per square foot.
- A. "B" 's offer by \$25
438. Q. A broker leases a store measuring 30 feet wide by 100 feet deep for a period of five years at an annual rental of \$2.50 per square foot. What would be the broker's total earnings if the rate of commission is 5% for each year?
- A. \$1,875
439. Q. A contractor tells you he can reproduce a building for 55 cents per cubic foot and you determine that the building has a ground floor area of 36 feet by 40 feet, and an average height of 14 feet. What would be its reproduction cost?

- A. \$11,088
440. Q. If an \$8,000 home assessed at 60% of that amount has a combined tax rate of \$4.21 per \$100, what would be the amount of the total annual tax?
- A. \$202.08
441. Q. An agent collected rents monthly as follows: \$25 for each of four flats; \$40 for each of six flats; \$50 for each of two flats. He paid out \$18 for water and \$6 for repairs. He was to receive 3% of the gross rentals as commission. What were the total collections and net to owner?
- A. \$440, total collections; \$402.80, net to owner
442. Q. A rectangular lot 210 feet long and 200 feet wide was subdivided into 8 lots of 50' \times 90' with a road running lengthwise through the middle of the lot. What per cent of the lot area was reserved for the road?
- A. 14.28 per cent
443. Q. Mr. Redman has property assessed at \$54,500. Find the amount of his taxes if the tax rate is 20 mills per \$1.00.
- A. \$1,090 for taxes
444. Q. J. James paid \$484 property tax. If his property was assessed at \$11,000, what was the tax rate in mills? Express this rate in dollars per \$100.
- A. 44 mills; \$4.40 per \$100
445. Q. A Realtor sells a 50' \times 100' property at 75¢ a square foot. If his commission is 5%, how much does he give the owner?
- A. \$3,562.50
446. Q. A lot was sold for \$10,000. The buyer pays \$4,000 down and the balance in equal installments in five years. (a) How much a month does he pay on the principal? (b) If he pays 5% interest per year on the balance, how much interest does he pay at the end of the first month?
- A. (a) \$100; (b) \$25
447. Q. The monthly rent for an office is \$75. The size of the office is 12 feet by 20 feet. What is the annual rate per square foot?
- A. \$3.75
448. Q. If a \$10,000 home is assessed at 80% of its value and the combined tax rate is \$3.80 per \$100 assessed valuation, what is the amount of the total annual tax?
- A. \$304 taxes
449. Q. Mr. Brown built a house 33 feet by 45 feet which had an offset for the family room of an additional 5 feet by 15 feet. If construction cost was \$12.85 per square foot, how much did it cost to build the house?
- A. \$20,046
450. Q. Taxes on a parcel of property are \$1,325.28, for the current year. The first one-fourth of the taxes were paid by the seller. You sell the property and will close the deal and make the prorations as of December 15th. How much will you charge the seller for his share of the taxes?
- A. \$938.74 seller owes.
451. Q. What would be the F.H.A. insurable loan on a dwelling if the F.H.A. valuation is \$20,000 and the F.H.A. insured 97% of the first \$15,000 valuation and 85% of the remainder?
- A. \$18,800 total insurable loan
452. Q. On September 1, 1976, a house was insured against fire for 90% of its \$24,000 value. The insurance rate paid was 54 cents per \$100 for a three-year period. The house was sold February 1, 1978. What was the unearned premium to be charged the buyer?
- A. \$61.56
453. Q. You are to ascertain the value of a ranch home, which the owner will list with your office, based upon the following information: The lot is 75 feet front and 125 feet deep, cost \$5,000, and has appreciated 4 per cent in value each year. The dwelling, built four years ago, is 28 ft. \times 38 ft. in size; would cost \$12.50 per sq. ft. to

reproduce today, allowing $2\frac{1}{2}$ per cent depreciation per year.

- A. \$17,820
454. Q. You are called upon to make an appraisal of a one-family dwelling. This is a one-story, basementless house with breezeway and garage. The lot, 80 feet wide and 180 feet deep, is valued at \$31.50 per front foot. The actual exterior dimensions of the house are 28 feet \times 40 feet; for the breezeway, 11 feet \times 13 feet; and for the garage, 13 feet \times 21 feet. Construction costs for this type of property are \$14.50 per square foot for the house itself; \$8.25 per square foot for the breezeway; and \$10.75 per square foot for the garage. You determine that the value of the grading, shrubbery and lot improvement is \$575. There is an estimated cost for painting and small repairs amounting to \$395. The building has an effective age of 8 years and a life expectancy new of 50 years. If there is no functional or economic obsolescence, what is the property's indicated fair market value, cost approach?
- A. \$20,432.58
455. Q. Stone built a house 30' \times 24' \times 25' with an attached garage of 1,437 cubic feet, all at a cost of $83\frac{1}{2}$ cents per cubic foot. A special artistic entrance cost \$384.57. What is its value today, if it is two years old and being depreciated on a 30-year life?
- A. \$15,506.84
456. Q. Crouch is employed as a salesperson by Realtor Evans. Crouch receives 40 per cent on sales. A subdivision is listed for sale with various listed prices, depending upon size and location. Flynn, Sales Manager for Evans, receives an override commission of 10%. Crouch sold 7 lots at \$2,400 each, 5 lots at \$2,850 each and 6 lots at \$3,200 each during June 1974. The subdivision owner pays Evans a 5 per cent commission on sales. How much did Evans earn in commission during the month on Crouch's sales?
- A. \$1,356.75
457. Q. You, as a broker, sold two lots fronting on Elm Street. Each lot has a frontage of 63 feet. The corner lot sold for 23% more than the adjacent lot which sold for \$115.00 per front foot. What was the combined total selling price of the two lots?
- A. \$16,156.35
458. Q. What would be the broker's net commission on the sale of a property for \$9,350 with 6% commission out of which amount the broker's expenses are as follows:
 10% listing fee off top of gross commission
 50% of remainder for salesman's commission
 12% of gross commission for advertising
 7% of gross commission for office expense
- A. \$145.86
459. Q. A piece of land 990 feet by 660 feet is for sale. The owner is asking \$3,000 an acre. What is the selling price?
- A. \$45,000
460. Q. A lot 60 feet wide and 150 feet deep sold for \$150.00 per front foot. What was the selling price of the lot?
- A. \$9,000 selling price
461. Q. A bank pays interest twice a year. Find the difference between simple interest and compound interest on \$1,090 for a year at 4%.
- A. \$.44 difference
462. Q. On April 1, 1977, Anna James bought a house for \$9,000. During the year she spent \$190 for repairs, \$1,200 for a garage, \$295 in taxes and \$50 for insurance. The following April she sold the house for \$11,250. Find the total gain.
- A. \$515 gain
463. Q. The sales in a real estate company in 1976 amounted to one-fourth more than in 1975. They were one-fifth more in 1977 than in 1976. If sales in 1977 amounted to \$300,000, what did the sales amount to in 1975 and 1976?
- A. 1975: \$200,000; 1976: \$250,000

464. Q. A man bought a house for \$14,160. Due to health conditions, he was forced to sell for $8\frac{1}{3}$ per cent less than he paid. Find the selling price and the loss.
A. \$1,180 loss; \$12,980 selling price
465. Q. How much additional cash must a buyer furnish in addition to his \$1,000 deposit if the lending institution grants $66\frac{2}{3}\%$ loan on a \$12,000 home?
A. \$3,000
466. Q. An insurance premium for three years is \$72.00. The buyer is going to set up an insurance reserve with his loan to pay for the premium three years later. What will be the amount of the monthly reserve?
A. \$2.00
467. Q. The rental income from a duplex is \$240 per month. Find the cost of the house if the annual income is 9 per cent of the cost.
A. \$32,000 cost of house
468. Q. J. Johnson paid \$16,000 for his new home. The assessed value is 60% of the market value. The tax rate is \$2.50 per \$100 of assessed valuation. Find the assessed valuation and the tax.
A. \$9,600 assessed valuation; \$240 taxes
469. Q. If $5\frac{1}{4}\%$ is the annual rate of interest and the monthly interest payment is \$58.45, what is the amount of the original loan?
A. \$13,360.00
470. Q. What is the annual interest rate on a \$6,000.00 loan when the interest payments are \$105.00 semi-annually on the full amount?
A. $3\frac{1}{2}\%$
471. Q. A salesman's half of a 5% commission for the sale of a 320-acre ranch at \$175.00 an acre would be how much?
A. \$1,400.00
472. Q. A lending institution requires that a buyer have a net monthly income $4\frac{1}{2}$ times the monthly mortgage (total), and they use a flat 10% deduction of the gross income to compute the net income. What would be the minimum gross annual salary of a person to qualify for a \$20,000 home with 25% down and the balance to be amortized over a 20-year period at 6% interest, with monthly mortgage payments of \$138.00 (total)?
A. \$8,280
473. Q. What would be the cost of excavating a basement 48 feet long, 30 feet wide, and 9 feet deep at 35¢ per cubic yard? (27 cubic feet = 1 cu. yd.)
A. \$168.00
474. Q. Salesman "A" obtains an exclusive listing for \$24,500 and is to receive 20% of the 6% commission received by the broker on the sale as a listing fee. Salesman "B" sells the property at a 4% reduction of the listed sales price, and is to receive 35% of the commission after Salesman "A" has been paid. 3% of the full commission is to be paid to the Multiple Listing Service. How much does Salesman "B" receive?
A. \$383.28
475. Q. A small town has a proposed budget of \$260,000 to be met by taxation. The assessed valuation of taxable property is \$6,500,000. Will a tax rate of 30 mills provide sufficient funds to meet the budget?
A. No
476. Q. A chain-store company is interested in taking a 21-year lease on a store property in a certain location. You have located an ideal site for this store, which is for sale for \$10,000 and is listed with you. You know a builder whose entire capital is \$5,000 who would be willing to build. You also know an investor willing to buy the property after it has been constructed, and you have assurance that the chain store company would lease the property. How would you arrange this deal to everybody's satisfaction, and how many commissions would you earn in this transaction?
A. Have the builder buy the land giving \$5,000 cash and a purchase money mortgage with a subordination clause. Negotiate a construction loan mortgage. Sell property

- to investors. Lease property to chain-store. Four commissions (sale of land, construction loan mortgage, sale of property, and lease).
477. Q. A mortgage company agrees to lend the buyer of a property a sum equal to 80% of its appraised valuation, at 8% per annum. Interest for the first month is \$96. What is the appraised valuation?
- A. \$14,400 appraised value
478. Q. Jones bought a lot 70 feet \times 120 feet at \$63 per front foot. He built a house on the lot for \$9,216.00. The house depreciated at an average rate of 2% each year. If the lot increased in value at an average of $1\frac{1}{2}\%$ per year, what was the value of the entire property at the end of 8 years?
- A. \$12,680.64
479. Q. What is the appraisal value on a one-story house 32.5 feet by 40 feet at a replacement cost of \$13.50 per square foot, allowing 5% depreciation for one year?
- A. \$16,672.50
480. Q. An apartment house had a gross income of \$1,250 per month with annual expenses of \$5,900, including depreciation. What price would a buyer pay for the property to show a net return of 7% on his investment?
- A. \$130,000
481. Q. You are to appraise an apartment house which has an annual gross income of \$22,500. Taxes, insurance and operating expenses amount to \$10,500 per year. Assume an overall capitalization rate of 12%. What is the value of the property, using the capitalization of net income approach to value?
- A. \$100,000
482. Q. If concrete costs \$4.10 per cubic yard and labor costs are 87 cents per sq. foot, what would be cost of driveway 36 feet long by 6 feet wide and 3 inches thick?
- A. \$196.12
483. Q. A property showed a net income of \$3,000 per year over the past 5 years. Typical properties yield a return of approximately 5%. Eliminating depreciation, and using the 5% return as the capitalization rate, what is a fair estimate of the value of the property?
- A. \$60,000
484. Q. A vacant piece of land, of irregular terrain, has been appraised, as follows: 3,250 sq. ft. of slope at 14 cents per sq. ft.; 2,000 sq. feet of creek area, $8\frac{1}{2}$ cents a sq. foot; and 7,250 sq. ft. of flat land at \$1 a sq. ft. If the entire tract is sold, what would be the price per sq. ft. to obtain the appraised value of the property?
- A. \$.63
485. Q. An appraiser, using the income approach, is estimating the value of a single-family residence. He finds comparable properties rent at \$125 per month. Recent sales in the area were \$18,000. Estimate the gross rent multiplier.
- A. 144 GRM
486. Q. Edwards paid \$24,000 for a home. He sold it to Oliver for a $3\frac{1}{2}\%$ profit. Oliver was forced to sell the property to Jordan and suffered a $11\frac{1}{2}\%$ loss. What was the price on the sale to Jordan?
- A. \$21,983.40
487. Q. Hall rents three houses for \$135 per month each. He pays 10% of the gross monthly rental as commission, to Christopher, his agent, who makes a \$60 mortgage and interest payment monthly on each house. At the end of one month, how much should Christopher remit to Hall?
- A. \$184.50
488. Q. On the scale of the plan of a lot, $\frac{1}{8}$ of an inch equals one foot. If the lot plan measures $13\frac{1}{2}$ inches (width) by $17\frac{3}{4}$ inches (length), what is the actual width and depth of the lot?
- A. Width is 108 feet; depth is 142 feet
489. Q. If a chemical mixture contains 105 parts of coarse mix and 45 parts of fine mix, what per cent of the total does the coarse mix represent?

- A. 70 per cent
490. Q. A lot fronts 80 feet on Main Street, and is 125 feet deep on each side. The owner is erecting a fence on all sides except the front. The fence is 6 feet high. Exclusive of labor, the cost is \$1.50 per square yard. What is the cost of the fence?
- A. \$330
491. Q. A subdivision contains 5 blocks. Each block is divided into 4 sections, and each section contains 7 lots. How many lots does the subdivision have?
- A. 140 lots
492. Q. Dougherty purchased a lot 75 feet wide and 125 feet deep. 35% of the total area was used to construct a dwelling. The State Highway Department took 20% of the total area for a road widening. How many square feet remained in the lot after the house was built and the condemnation had been completed?
- A. 4,218.75 sq. ft.
493. Q. A gross profit that is 25 per cent of the selling price is what per cent of the cost?
- A. $33\frac{1}{3}$ per cent
494. Q. Sims Co. divided 120 acres into 240 one-half acre lots. The company then decided to make each lot $\frac{2}{3}$ of an acre in size. How many fewer $\frac{2}{3}$ -acre lots would it have?
- A. 60
495. Q. Margaret Snyder owns a ten-unit apartment building, each unit of which rents at a monthly rental of \$100 if the owner pays the utilities, or \$80 per month if the tenant pays the utilities. The utilities cost \$120 per month for the ten units. How much more net income would the owner realize if she paid for all utilities?
- A. \$80
496. Q. C. J. Altemus desires to rent a space of 800 square feet for an automobile show room. Its length is twice the width and a glass window is on the long side of the room. If new cars are 8 feet wide and placed side by side, with 2 feet between them, how many cars can be placed in this space, facing the window?
- A. 4 cars
497. Q. William Dougherty sold two single family residences, one for \$40,000 and the other for \$36,000. Each had a mortgage in the principal balance of 75% of its sales price, payable over 25 years, interest at $8\frac{1}{2}\%$ per annum. The monthly payments on each mortgage, including principal and interest, are \$8.06 per thousand. How much less would the monthly payments be on the \$36,000 house?
- A. \$24.18
498. Q. A savings account has a \$9,500 balance and a bi-monthly interest rate of \$79.17. What is the annual interest rate paid?
- A. 5 per cent
499. Q. An apartment building has a capitalized value of \$47,600. The property pays a net return of 6 per cent and the expenses are 15% of gross rentals. What is the semi-annual gross income?
- A. \$1,680
500. Q. "A" property has had a net income of \$4,000 per year. "B" property has had a net income of \$5,600 per year for the past five years. Using 8% as the capitalization rate on both properties and excluding depreciation, how much more valuable is the "B" property than the "A" property on a *percentage* basis?
- A. 40 per cent
501. Q. John Hall has \$50,000 invested in a stock that yields 4 per cent per annum. He now pays \$200 rent per month. He decides to take the \$50,000 and buy a duplex. He will live in one unit and rent the other unit for \$250 per month. How much will he realize over his rent and investment return, if maintenance and utilities cost \$2,600 per year?
- A. \$800, gain
502. Q. Frank Shook bought a lot at \$250 per front foot. The lot is 100 ft. front by 225 ft. deep. He builds a 3-story building, with each floor being 70 feet by 90 feet. The building cost is \$23 per square foot of floor space. Landscaping and paving of the

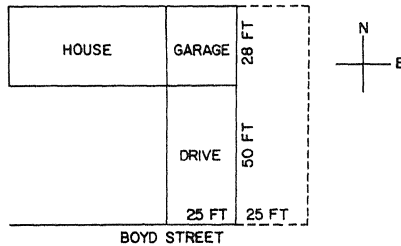
lot cost \$2.00 per square foot. Shook plans to sell the property and receive a 10% return on his investment. What price should he ask?

A. \$541,310

503. Q. Ace Trailer Co. sold 18,000 trailers in 1977. The company has had a 20% increase in sales each year since 1974. How many trailers did Ace sell in 1974?

A. 10,417

504. Q. Briggs plans to change garage doors to face east. The drive will be the same width and will extend parallel to existing drive to the north end of the garage. At 40 cents per square foot, how much will it cost to asphalt the addition to the drive?



A. \$780

505. Q. What per cent interest is \$600 per annum on a \$12,000 mortgage?

A. 5 per cent

506. Q. John Boyd sold his residence to Albert Russell on June 15, 1978. Boyd is transferring the three-year insurance policy, dated January 2, 1977, to Russell. The premium was \$108. Questions:

(a) How long has the policy been in force?

(b) What amount of insurance premium is unexpired?

(c) Is the unexpired premium a debit or a credit to Russell?

A. (a) 1 year, 5 mos., 13 days

(b) \$55.70

(c) Debit to Russell

507. Q. The loan on a property is 65% of its appraised value, with interest at 8%, and the first monthly interest payment is \$260. What is the appraised value?

A. \$60,000

508. Q. If an owner pays $8\frac{1}{4}\%$ interest on a mortgage, which comes to \$275 interest per month, what is the amount of the mortgage?

A. \$40,000

509. Q. If an owner pays interest of \$212.50 quarterly on a mortgage of \$10,000, what is the interest rate on the mortgage?

A. $8\frac{1}{2}\%$ per cent

510. Q. Each lot in a subdivision is 900 feet in width and 400 feet in depth. In terms of acreage, what does the lot measure?

A. 8.26 plus acres (approx.)

511. Q. Taxes: 1 mill = \$.001. A house sold for \$36,250. The uniform assessment is 50% of market value. The tax rate is 40 mills. How much are taxes?

A. \$725

512. Q. Helen Wilson purchased a dwelling for \$42,500. The annual depreciation is 3% per year. What is the value of the house at the end of four years?

A. \$37,400

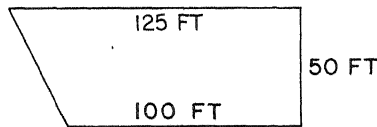
513. Q. William Dougherty has invested \$60,000 in a 4-unit apartment building. The annual expenses are \$1,200. He was told that his return would be 10%. What is the rental of each unit per month?

A. \$150

514. Q. Rita McClure purchased an eight-unit apartment building for \$85,000. Four units rented for \$200 per month, and four units rented for \$190 per month. All expenses amount to \$8,250. What is the net income and percentage yield on the invest-

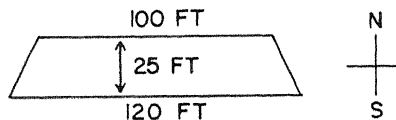
ment?

- A. Net income is \$10,470. Rate of return = 12.3%
515. Q. A property owner is forced to sell his home so as to realize \$23,500. The local commission rate is 6%. What must be the selling price of his home?
- A. \$25,000
516. Q. Broker Hill is preparing a plat. He uses $\frac{1}{12}$ inch to represent 10 feet. The plat drawn shows a width of 5 inches. How wide is the tract of land?
- A. 600 feet wide
517. Q. The description of a farm in a 1907 deed read 80 rods on a road, front and rear, and 40 rods deep on each side. What was the size of the farm acreage?
- A. 20 acres
518. Q. Jane is buying a bungalow that is 78 front feet by 130 feet deep. The outside walls are 6 inches thick. How much floor space is there on the inside of the dwelling?
- A. 9,933 sq. feet
519. Q. Laura Forsyth, a broker, sells a tract of land for Jerry King at \$1.50 per square foot. The land is 50 feet front and 100 feet in depth. Commission is 6%. What is the net amount due King?
- A. \$7,050
520. Q. If a duplex costing \$21,000 has a net income of \$140 per month, what is the per cent of return to the owner?
- A. 8 per cent
521. Q. Broker Gaines received a 5% commission on the sale of Horton's home. Horton received \$56,900, after reimbursing Gaines \$100 for advertising. What was the selling price of the house?
- A. \$60,000
522. Q. Rita Perry is purchasing a lot in a subdivision from Andy McClure at \$1.20 per square foot. The lot is irregular in shape, as shown below:



The lot is assessed at 40% of its market value and the tax millage is 60 mills.

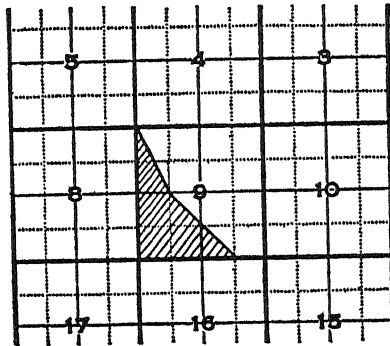
- (a) Q. What is the market price of the lot? A. \$6,750
- (b) Q. What is the assessed value? A. \$2,700
- (c) Q. What is the amount of annual tax to be paid? A. \$162
523. Q. Jean Williams is negotiating the sale of the property shown below. The asking price is \$2,750. The prospect wants to know how many square feet in the tract, and the price per square foot.



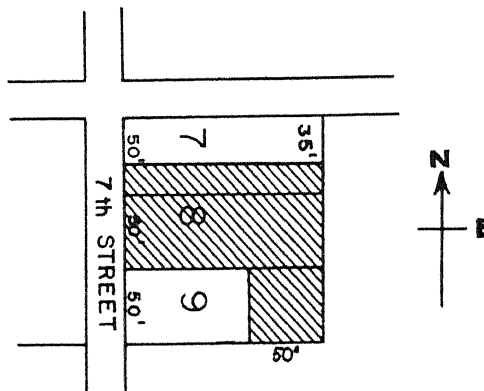
The northern boundary is parallel to the southern boundary and the width is 25 feet.

- A. 2,750 square feet; \$1.00 per square foot

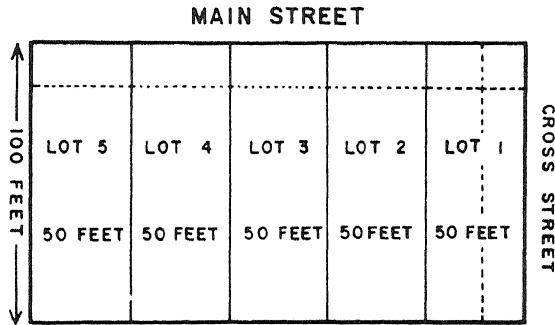
524. Q. John Sefton owns a home in the City of Skymore, which he purchased on May 15, 1970, for \$25,500. Since then, properties have increased, generally, 7 per cent annually. At what price, should he offer the house for sale in May 1978?
- A. \$39,780.
525. Q. Agatha Valden is selling her double duplex building (four units) for \$52,000. Three units each rent for \$150 per month, and one unit is rented to a relative at \$110 per month. Annual taxes are \$900; total insurance premiums cost \$140 per year; and, maintenance is \$340 per year. What is the buyer's net return and what per cent is returned on the investment?
- A. \$5,340 is the net income; the return is 10.27 plus per cent.
526. Q. Plot the following metes and bounds land description: Starting at the NW corner of the NW $\frac{1}{4}$ of Section 9, draw a line to the SE corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 9; thence, to the SE corner of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 9; thence, to the SW corner of Section 9; thence, one mile due north to the point of beginning.
- How many acres in this tract ?
- A. 200 acres



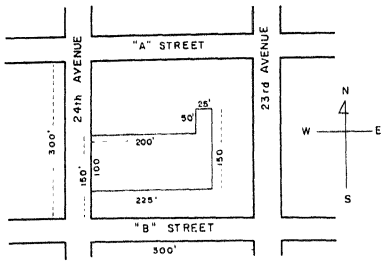
527. Q. Below is shown a portion of Tract 618, as per map recorded in Book 37, Page 19, Official Map Records of Maricopa County. A parcel consisting of the shaded areas was sold.
- (a) Describe the conveyed portion by a fractional description.
- (b) How many square feet in parcel conveyed?



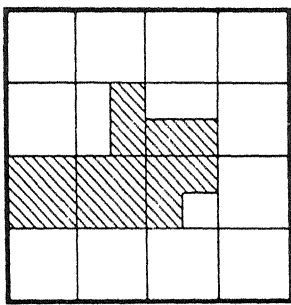
- (c) The portion of the parcel with 125 ft. depth was sold for \$500 a front foot on 7th Street, and the portion on the rear of Lot 9 was sold for \$2.20 per sq. ft. What was the total consideration?
- A. (a) The south 15' of Lot 7; all of Lot 8, and the east 50' of Lot 9; all in Tract 618, as per map recorded in Book 37, Page 19, official maps of record of Maricopa County
- (b) 10,625 sq. ft.
- (c) \$38,000.00 total consideration
528. Q. There is a 15-foot building setback ordinance applying to all lots fronting on Main Street and a 20-foot setback applying to all lots fronting on Cross Street, as indicated by the dotted lines on the following diagram:



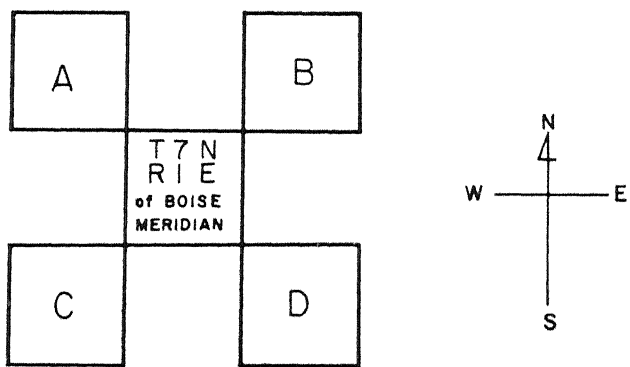
- (a) Presuming no other setback or areaway requirements, how many square feet of Lot 1 can be used for building purposes?
- (b) J. F. Jolly wishes to construct a store building on the corner of Main and Cross Streets. The building is to have 8,100 square feet of ground floor space. Mr. Jones owns Lots 1 to 5, inclusive, and will sell any or all of the lots, but will not cut up any one of them. What is the minimum number of lots Mr. Jolly will have to buy to allow construction of the building described?
- (c) If Mr. Jolly buys all of the lots and pays \$127.50 per front foot for lots 2, 3, 4, and 5 and \$185.00 per front foot for the lot fronting on Cross Street, what would be his total cost for all of the lots?
- A. (a) 2,550 sq. ft.
- (b) Lots 1, 2, and 3
- (c) \$44,000.00
529. Q. On the following diagram, you are to plot out the following legal description and insert the dimensions of the area described:
- (a) "Beginning at a point on the easterly side of 24th Avenue at a point 150 feet north of the northerly side of "B" Street; thence east and parallel with "A" Street a distance of 200 feet to a point 100 feet west of the westerly side of 23rd Avenue; thence north 50 feet; thence east a distance of 25 feet to a point 75 feet west of the westerly side of 23rd Avenue; thence south 150 feet to a point; thence west to a point on the easterly side of 24th Avenue 50 feet north of the northerly side of "B" Street; thence north 100' to the point and place of beginning."
- (b) If the area described in part (a) sells for 42¢ per square foot, what will be the total amount of commission collected by a broker if he works on a 5% straight commission?
- A. (a) See drawing.



- (b) \$498.75
530. Q. The following diagram represents Section 14, Township 22 N, Range 17 E of the 6th Principal Meridian.
- (a) You are to indicate the area and shade in the following:
- S 1/2 of SW 1/4 of the NE 1/4
- E 1/2 of SE 1/4 of the NW 1/4
- N 1/2 of the SW 1/4
- W 1/2 and NE 1/4 of NW 1/4 of SE 1/4
- (a) See drawing.
- (b) How many acres are contained in this tract?



- A. 150 acres
531. Q. The diagram below consists of five townships. The township in the center has been designated as Township 7 North, Range 1 East of the Boise Meridian.



- (a) Give the township and Range numbers for Township A.
- (b) Give the township and Range numbers for Township D.
- A. (a) T8N-R1W

(b) T6N-R2E





532. Q. The following diagram has been designated as Township 7 North, Range 1 East of the Boise Meridian.

(a) Number these sections correctly.

(b) Shade in the N $\frac{1}{2}$ of Section 17; the W $\frac{1}{2}$ of the W $\frac{1}{2}$ of Section 25; the SW $\frac{1}{4}$ of Section 32; and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 4.

(c) How many acres in the township have you shaded?

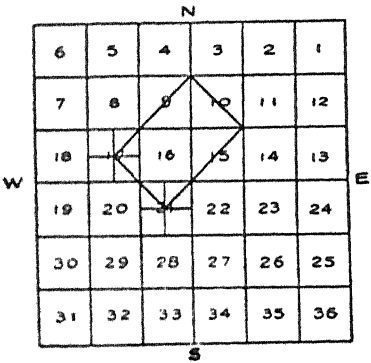
A. (a) and (b)

6	5		4	3	2	1
7	8		9	10	11	12
18			16	15	14	13
	17					
19	20	21	22	23	24	
30	29	28	27	26		25
31	32		33	34	35	36
						

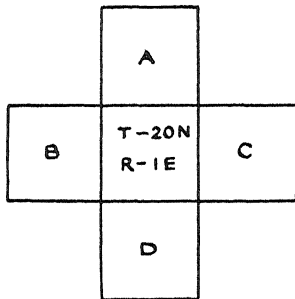
(c) 680 acres

533. Q. Draw a township plan on a scale of approximately one inch to the mile and number all sections correctly. Mark this plat showing directions and work out the following description:

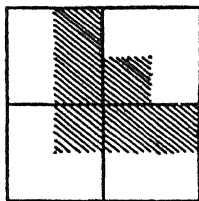
(a) "Beginning at the NW corner of the NW $\frac{1}{4}$ of Section 10, thence southeasterly to the SW corner of the SW $\frac{1}{4}$ of Section 11, thence southwesterly to the NW corner of the SE $\frac{1}{4}$ of Section 21, thence northwesterly to the SW corner of the NE $\frac{1}{4}$ of Section 17, thence northeasterly to the point of beginning."



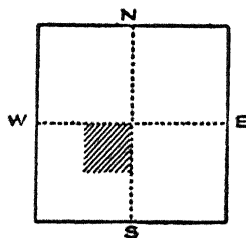
- (b) How many acres in the above described tract ?
- (c) What is the name of this type of description?
- A. (a) Drawing above; (b) 1,920 acres; (c) Metes and Bounds
534. Q. The following diagram represents five adjacent townships, the center one of which has been designated as Township 20 North; Range 1 East of the 6th P.M.



- (a) Give township and range numbers for Township “A” in above diagram.
- (b) Give township and range numbers for Township “B” in above diagram.
- (c) Give township and range numbers for Township “C” in above diagram.
- (d) Give township and range numbers for Township “D” in above diagram.
- A. (a) T-21 N; R-1E
- (b) T-20 N; R-1W
- (c) T-20 N; R-2E
- (d) T-19 N; R-1E
535. Q. The diagram below has been designated as Section 32; T-12-N; R-3-E of the 6th P.M.

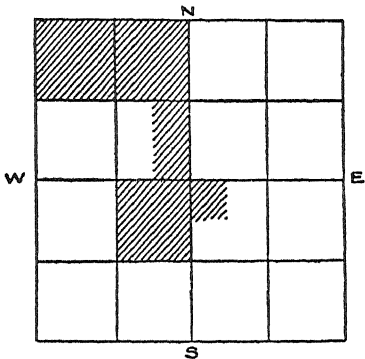


- (a) On the above plat, how many acres are contained within the shaded area?
- (b) What would be the cost per acre if the above tract sold for \$23,340?
- A. (a) 240 acres; (b) \$97.25
536. Q. (a) Draw a diagram of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of a section of land.
- (b) How many acres are in the plot ?
- A. (a)

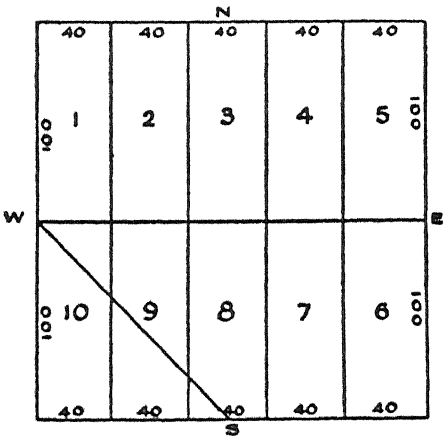


- (b) 40 acres

537. Q. Below is a diagram of a section of land. Locate and shade in the following tracts, and show how many acres in each:
- (a) $E \frac{1}{2}$ of $SE \frac{1}{4}$ of $NW \frac{1}{4}$
 - (b) $NE \frac{1}{4}$ of $SW \frac{1}{4}$
 - (c) $NW \frac{1}{4}$ of $NW \frac{1}{4}$ of $SE \frac{1}{4}$
 - (d) $N \frac{1}{2}$ of $NW \frac{1}{4}$
 - (e) If the land described sells for \$52.50 per acre, what was the selling price?
 - (f) What would the sales commission be at 10%?



- A. (a) 20 acres; (b) 40 acres; (c) 10 acres
(d) 80 acres; (e) \$7,875; (f) \$787.50
538. Q. Draw a plat of a SQUARE block consisting of 10 identical lots 40' by 100'.
(a) The top of the plat will face north and the lots will face north and south. The lots will be numbered from 1 to 10, clockwise, beginning with the northwesterly lot. Show the dimensions.
(b) Show the following described tract: "Beginning at the intersection point of the south and west boundaries of the number 10 lot, thence due north 100 feet, thence southeasterly to a point on the south boundary of lot 8 twenty feet west of the intersecting point of the south and east boundaries of lot 8, thence due west to the place of beginning."
(c) How many square feet in the above described tract?
(d) How many square feet remain in just the lots affected by the above described tract?



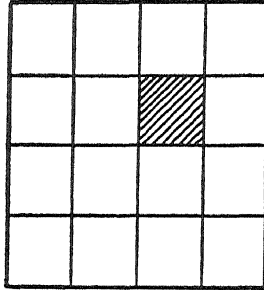
(e) Excluding all of lots 8, 9, and 10, how many square feet remain in the balance of the entire tract?

- A. (a) and (b)
(c) 5,000 (d) 7,000 (e) 28,000

539. Q. The diagram below has been designated as Sec. 17, T-3-N, R-16, EBM.

- (a) Shade the SW $\frac{1}{4}$ of NE $\frac{1}{4}$.
(b) How many acres in this shaded portion?

- A. (a)

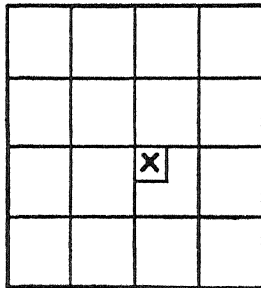


(b) 40 acres

540. Q. Give the correct description of the following parcel of land, marked with

- (a) an "X", situated in Sec. 31, T-4-N, R-5-EMB.
(b) How many acres in this area marked with an "X"?

- A. (a) NW $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ Sec. 31; T4N, R 5 EMB
(b) 10 acres

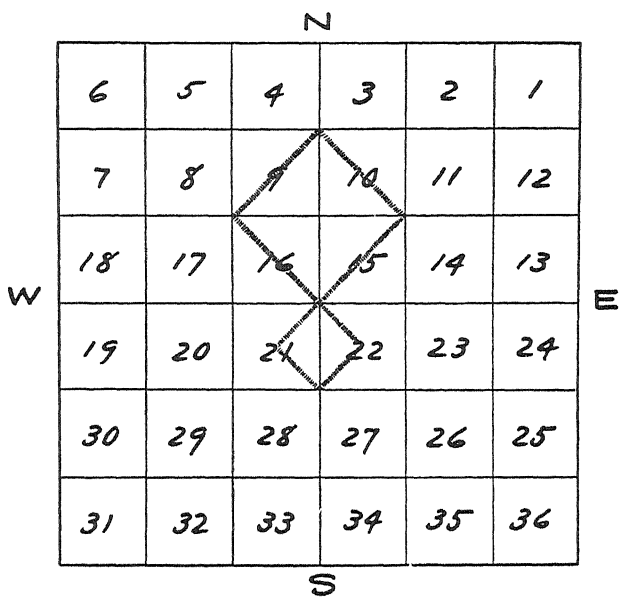


541. Q. (a) Draw a township plat and number all sections in the proper order.

(b) Work out the following description:

"Beginning at the SE corner of section 4, thence southeasterly to the SE corner of section 10, thence southwesterly to the NW corner of the SE quarter of section 21, thence southeasterly to the NE corner of section 28, thence northeasterly to the SE corner of the NW quarter of section 22, thence northwesterly to the SW corner of section 9, thence northeasterly to the point of beginning."

- (c) How many acres in the tract described in Part (b)?
(d) How many acres of section 15 are included in the tract in Part (b)?
(e) What is the name of the type of description in Part (b)?



- A. (a) and (b).
(c) 1,600; (d) 320; (e) Metes and Bounds
542. Q. (a) How do you arrive at area in terms of square feet ?
(b) How do you arrive at cubage?
- A. (a) Multiply the frontage (or width) by the depth.
(b) Multiply frontage by depth by height.
543. Q. (Pennsylvania) Make up a settlement sheet from the following information: Adam Steele, unmarried, is selling his property located at 613 Highland Avenue, Pittsburgh, Pa., to Henry Wagner at a consideration price of \$3,500. The purchaser has paid \$200 deposit money. The deal is being closed as of May 15, 1974. The county taxes, amounting to \$21.28 per year, have not yet been paid. The city and school taxes for 1974, amounting to \$72.47 per year, have been paid by the seller. Fire insurance policy premium for policy expiring January 30, 1975, in the amount of \$2,500, was \$13.13. The rent is \$32.50 per month.

A.

STATEMENT OF SETTLEMENT

Date: May 15, 1974

Seller: Adam Steele
Purchaser: Henry Wagner
Premises: 613 Highland Ave., Pittsburgh, Pa.

	Debit	Credit
Consideration	\$3,500.00	
Deposit Money		\$ 200.00
4½ mos. County Tax (1974)		7.98
7½ mos. City and School Tax (1974)	45.29	
8½ mos Fire Ins. Policy	9.30	
1½ mo. rent		16.25
Due Seller		3,330.36
	\$3,554.59	\$3,554.59

WITH SELLER

	<i>Debit</i>	<i>Credit</i>
Due at settlement		\$3,330.36
State Stamps	\$35.00	
City Stamps	35.00	
Notary Fee	.50	
Net Due seller	<u>3,259.86</u>	
	\$3,330.36	<u>\$3,330.36</u>

544. Q. (Arizona) A broker listed a property for \$21,500. He finally sold it for \$20,500. The commission paid to broker was 5%. The property was assessed at 52% of the sale price and the tax rate is \$4.828 per hundred. Taxes are paid in full for the fiscal year 1977-1978. There is an \$8,500 mortgage of record at 6% interest. The interest is payable semi-annually July 1st and January 1st of each year, and the interest is paid to July 1st, 1977. The improvements on the property are valued at \$16,000. The fire insurance policy is for 85% of this value at the premium rate of 78¢ per hundred for three years. The paid-up policy runs to January 1, 1978. Policy of Title Insurance for \$20,500 costing \$72.50 is paid by the seller. The escrow charges are \$32.00 divided equally between seller and buyer. Revenue stamps and a charge of \$1.50 for drawing the deed are paid for by the seller. Closing date on escrow is October 1, 1977.
- How much money does the seller receive?

	<i>Debit</i>		<i>Credit</i>
Existing Mtge.	\$8,500.00	Selling price	\$20,500.00
R. E. Comm.	1,025.00	Prorate Tax	386.00
Interest	127.50	Prorate Ins.	<u>8.85</u>
Title Ins.	72.50		
Escrow Charge	16.00	Total Cr.	\$20,894.85
Drawing Deed	<u>1.50</u>	Debit	<u>9,742.50</u>
Total	\$9,742.50	Cash Due	\$11,152.35

545. Q. (Arkansas) Prepare a closing statement using only the facts furnished here. Assume that you negotiated the sale as a real estate broker. A prospect signs an offer with you to buy a small residence property for \$8,000.00, agrees to assume an existing mortgage and deposits with you \$300.00 earnest money. The owner accepts this offer. The mortgage is in the original sum of \$4,000.00 and bears interest at 6% per annum; \$800.00 has been paid on the principal; the interest on the balance has been paid through January 31, 1978. Seller agrees that buyer shall be given credit for accrued interest. The 1977 general taxes in the amount of \$53.28 have been paid in full. No taxes of any kind are delinquent. Seller agrees that buyer shall be given credit for prorating of 1978 taxes to the closing date on the the same basis as the amount of taxes paid for 1977. There is a one-year fire insurance policy on the improvement in the amount of \$5,000.00 expiring July 1, 1978, on which a premium of \$28.56 has been paid. It is agreed to charge the buyer with the unused premium on a prorata basis and leave the policy in force. Your commission is 5%. The cost of continuation of the abstract to date is \$15.00. The proper amount of revenue stamps are to be placed on the deed. The closing date is August 1, 1978. The only money that you will end up with, as the broker, will be the commission, revenue stamp money and abstract fee.

A. SETTLEMENT WITH BUYER

	<i>Debit</i>	<i>Credit</i>
Sale price	\$8,000.00	
Insurance adjustment	26.18	

Mortgage		\$3,200.00
Interest		96.00
Earnest money		300.00
Taxes		31.08
Amount to collect from buyer at closing		4,399.10
	\$8,026.18	\$8,026.18

SETTLEMENT WITH SELLER

Sale price		\$8,000.00
Insurance adjustment		26.18
Mortgage	\$3,200.00	
Interest	96.00	
Taxes	31.08	
Commission	400.00	
Abstract	15.00	
Net due seller	4,284.10	
	\$8,026.18	\$8,026.18

546. Q. (California) A broker sold a single-family residence for \$17,800.00. The escrow closed on December 20, 1977, and it was agreed that prorations were to be made as of the close of escrow. The second half of the current fiscal year property taxes had not been paid. The taxes were \$468.00 per annum. A paid-up three-year fire insurance policy expiring December 31, 1978, costing \$75.60 originally, was also to be prorated in escrow. A standard title insurance policy costing \$154.00 was to be paid for by the buyer. The escrow instructions provided that seller would pay a 2 per cent discount fee for obtaining a new first trust deed loan securing a note in the amount of \$10,750.00 to refinance a first trust deed of like amount. The existing second deed of trust in the sum of \$3,250.00 contained a subordination clause. The second trust deed was assumed by the buyer. The broker handled the escrow, but he did not charge a fee for this service. The broker's commission of 6 per cent of the sale due from seller was to come from the proceeds of the escrow. From the above facts prepare closing statements for seller and buyer. Show all charges and credits. Assume there are no other costs to either party than those indicated above.

A.

SELLER'S CLOSING STATEMENT

	<i>Debit</i>	<i>Credit</i>
Purchase Price		\$17,800.00
Taxes (\$468 for 1/3 month \$39.00)		13.00
Insurance (\$75.60 12 1/3 months \$2.10)		25.90
Commission (\$17,800 × .06)	1,068.00	
Loan Charges (\$10,750 × .02)	215.00	
Assumed Second Deed of Trust	3,250.00	
Refinanced First Deed of Trust	10,750.00	
Balance to Seller	2,555.90	
	<u>\$17,838.90</u>	<u>\$17,838.90</u>

BUYER'S CLOSING STATEMENT

	<i>Debit</i>	<i>Credit</i>
Purchase Price	\$17,800.00	
Taxes	13.00	
Insurance	25.90	
Assumed Second Deed of Trust		3,250.00
Proceeds of Loan		10,750.00

Title Insurance	154.00	
Received from Buyers		3,992.90
	<u>\$17,992.90</u>	<u>\$17,992.90</u>

547. Q. (Florida) Diane Smith has contracted to purchase a duplex owned by C. P. Murphy for \$38,000. Mr. Robert Realtor, the broker, representing Mr. Murphy, has accepted a deposit from Miss Smith of \$2,000. Miss Smith has agreed to assume the existing first mortgage for \$26,500. Mr. Murphy has agreed to take back a second mortgage for \$5,000 at 7 per cent payable monthly over a ten-year term. Closing will take place on June 30. All prorations are on a twelve-equal-months-basis. The duplex was assessed by both the City and County for \$34,000. The millage in the City is 13 mills and in the County, 17 mills. The property insurance was prepaid for two years as of January 1 of this year in the amount of \$160. Both apartments in the duplex were rented January 1 of this year. Each unit rents for \$180 a month. The first month's payment on the second mortgage of \$58.06 is to be paid in advance at closing. The title company's bill for the abstract to seller was \$65. The seller was to furnish deed (\$10.00) and to provide state documentary and surtax stamps for the deed. The broker's commission is 6 per cent. Lawyer's fees of \$25 for the mortgage and note, recording fees of \$4.50 and documentary and intangible taxes based on the amount of the mortgage are payable by buyer. In addition, the buyer purchased title insurance costing \$380. Recording the deed fee is \$3.00. Based on the above information, prepare the following schedules: (1) Seller's Closing Statement; (2) Buyer's Closing Statement; (3) Broker's Reconciliation Statement.

A.	(1) SELLER'S CLOSING STATEMENT		
	DATE OF CLOSING		June 30, 19____
		Debit	Credit
	Purchase Price		\$38,000.00
	First Mortgage—Balance	\$26,500.00	
	Second Mortgage	5,000.00	
	Prorations and Prepayments		
	Rent	360.00	
	Prepayment: 2nd Mortgage		58.06
	Insurance		120.00
	Taxes: City	221.00	
	County	289.00	
	Expenses		
	Abstract Continuation	65.00	
	Attorney's Fee	10.00	
	Documentary Stamps:		
	Florida Surtax	12.65	
	Deed tax	114.00	
	Brokerage	<u>2,280.00</u>	
	Total Debits and Credits	34,851.65	38,178.06
	Balance Due Seller	<u>3,326.41</u>	
	GRAND TOTALS	<u>\$38,178.06</u>	<u>\$38,178.06</u>

(2) BUYER'S CLOSING STATEMENT		
DATE OF CLOSING		June 30, 19____
	Debit	Credit
Purchase Price	\$38,000.00	
First Mortgage—Balance		26,500.00
Second Mortgage		5,000.00
Binder Deposit		2,000.00

Prorations and Prepayments:		
Rent		360.00
Prepayment: 2nd Mortgage	58.06	
Insurance	120.00	
Taxes: City		221.00
County		289.00
Expenses:		
Attorney's fee	25.00	
Documentary Stamps:		
Mortgage—Note	7.50	
Intangible Tax—Mortgage	10.00	
Recording:		
Mortgage	4.50	
Deed	3.00	
Title Insurance	380.00	
Total Debits and Credits	38,608.06	34,370.00
Balance Due from Buyer		4,238.06
GRAND TOTALS	<u>\$38,608.06</u>	<u>\$38,608.06</u>

(3) Cash Reconciliation Statement
(BROKER'S STATEMENT)

	<i>Receipts</i>	<i>Disbursements</i>
Deposit	\$2,000.00	
Check from buyer at closing	4,238.06	
Brokerage fee		2,280.00
Check to seller at closing		3,326.41
Seller's expense (less brokerage)		201.65
Buyer's expense		430.00
TOTALS	<u>\$6,238.06</u>	<u>\$6,238.06</u>

548. Q. (New York) Adam Smith purchased a property from Bud Jones on July 1; price \$7,900.00, deposit on contract \$400.00, closing date to be August 15. The annual city taxes are \$126.00, the annual county taxes \$60.00, and the annual water charge \$18.00. All of these items have been paid as of January 1, and the monthly rental is \$66.00 which was paid to the end of the month. The purchaser is to assume a \$3,000 mortgage at 5 per cent. Interest was paid on July 1. Insurance policy is obtained by buyer at date of closing; the premium is \$48, for a three-year period. The seller is to pay the broker 4 per cent commission. Prepare an itemized statement which will indicate how much the seller owes the purchaser on closing, how much the purchaser owes the seller and how much commission was earned.

A.	<i>Seller Owes</i>	<i>Purchaser Owes</i>
Price		\$7,900.00
Deposit		<u>400.00</u>
Balance		7,500.00
City Tax		47.25
County Tax		22.50
Water		6.75
Rent	33.00	
Interest	<u>18.75</u>	
	51.75	
Commission	<u>316.00</u>	
GRAND TOTALS	<u>\$367.75</u>	<u>\$7,576.50</u>

549. Q. (Wisconsin) Albert and Elsie Sims are purchasing a dwelling in Goodtown, Wisconsin.

sin, from Richard Hebner for \$31,350.00, through the Model Realty Co. on August 6, 1977. An earnest money deposit of \$1,000 is paid to the broker. The deal is contingent on the buyers' obtaining a \$25,000 mortgage at 8 1/2 per cent for a 20-year term. If unable to obtain a mortgage, the seller agrees to accept their present home at 1223 Greentree Road, Goodtown, Wisconsin, at \$20,000; and a Land Contract Mortgage to the seller in the amount of \$5,000. The taxes for 1977 are \$1,125 per annum and have not been paid. The broker's commission is 7 per cent.

The agreements are dated August 6, 1977 and the deal is to be closed on August 31, 1977. The seller is to pay, in advance, an occupancy charge of \$5 per day for 10 days after the closing. The charge to the seller for Abstract Extension is \$116.87. Attorney's fee of \$50. Survey charge to seller of \$138.95. Termite Inspection \$45.00. \$600 is to be held by the broker to insure repair of septic system. Broker to hold \$1,500 in escrow for occupancy penalty to insure possession.

Prepare the following from the above information:

- 1. Buyer's Settlement Statement
- 2. Broker's Settlement with Seller

A.

BUYER'S SETTLEMENT STATEMENT

	Due Seller	Credit Buyer
Sale Price	\$31,350.00	
Down Payment		\$1,000.00
Tax Adjustment 1977, pro rated from January 1 to August 31 (Last Year's Tax \$1,125)		750.00
Prepaid Credit for Occupancy		50.00
Allowances for: Home at 1223 Greentree Road, Goodtown, Wisconsin		20,000.00
Total	\$31,350.00	\$21,800.00
Less credit to buyer	21,800.00	
Balance due seller	\$ 9,550.00	
Balance (3) due seller as follows:		
Land Contract - Mortgage executed this day to Seller	\$5,000.00	
Check of Cash to Balance	4,550.00	
Total Settlement due Seller	\$9,550.00	

BROKER'S SETTLEMENT WITH SELLER

	Charges Against Seller	Due Seller
Down Payment Received from Buyer		\$1,000.00
Cash Balance Received from Buyer		4,550.00
Charges Against Seller:		
Abstract Extension or Title Policy	\$ 116.87	
Attorney's Fee	50.00	
Survey	138.95	
Commission	2,194.50	
Services (Itemize)		
Termite Inspection	45.00	
Escrow Occ. \$1,500		
Sewer 600	2,100.00	
Total payments Due Seller		\$5,550.00

Total Charges Against Seller	<u>\$4,645.32</u>	<u>4,645.32</u>
Net Balance to be paid Seller		\$ 904.68

550. Q. From the following information, prepare a closing statement: Ray Upton and Opal, his wife, sellers, and Don Hutchins and Mary, his wife, buyers. Agreement is dated January 13, 1978 and closing is on February 15, 1978. Selling price is \$18,000 and 10 per cent was paid as an earnest money deposit. Buyers have assumed and agreed to pay existing mortgage of \$14,468 interest at 6%. Taxes, interest, insurance and rents are to be prorated on a 30-day month. Taxes, based on 1977 figures, amount to \$411.60 for the year. Present rental is \$95 per month. February rent has been paid. The insurance policy, dated December 1, 1976, is for a three-year period and premium is \$226.08. Abstract extension fee is \$30; abstract examination is \$25 and loan transfer fee is \$50. Recording fee is \$3. Broker's commission is 6%.

CLOSING STATEMENTS

	SELLER: _____		BUYER: _____	
	Debit	Credit	Debit	Credit
1. Sale Price		\$18,000.00	\$18,000.00	
2. Earnest Money				1,800.00
3. Mortgage Balance	14,468.00			14,468.00
4. Mortgage Interest Proration	36.17			36.17
5. Real Estate Taxes	51.45			51.45
6. Hazard Insurance		135.02	135.02	
7. Apartment Rent Proration	47.50			47.50
8. Abstract Extension	30.00			
9. Abstract Examination			25.00	
10. Loan Transfer Fee			50.00	
11. Deed Recording Fee			3.00	
12. Commission—John Doe Realty	1,080.00			
13. Balance Due from Buyer	XXXXXX	XXXXXX		1,809.90
14. Balance Due Seller	<u>2,421.90</u>		<u>XXXXXX</u>	<u>XXXXXX</u>
TOTALS	<u>\$18,135.02</u>	<u>\$18,135.02</u>	<u>\$18,213.02</u>	<u>\$18,213.02</u>

Answer the following questions as *True* or *False*. If false, give the correct answer.

- Upon receipt of the deposit money, the broker should turn it over to the seller.
A. Should deposit it in his trust or escrow account.
- The broker is the agent of the sellers.
A. True.
- The sellers are no longer liable for payment of the mortgage.
A. False.
- The buyer is not liable for the mortgage.
A. False—since buyer has assumed and agreed to pay the mortgage.
- If Don Hutchins dies, his interest will be inherited by his wife and children.
A. False. By his wife.
- In lieu of an abstract, mortgage insurance could have been obtained.
A. False. Title insurance.
- No title insurance is necessary for the buyers, since the mortgagee has title insurance.
A. False. Mortgage only is protected.
- The consent of the mortgagee to the sale is required.
A. False.
- The mortgagee must now file a lien release in favor of the buyers.
A. False. The mortgagee does nothing.
- If the buyers default on the mortgage, the mortgagee can foreclose and hold the buyers liable for any deficiency.
A. True.

11. If the mortgagee sells (assigns) the mortgage, the assignee should obtain a Certificate of No Defense (Estoppel Certificate) from the buyers.
- A. True.
551. Q. (Georgia) Adam Baker and Helen Baker, his wife, sold their property in Greenwood Acres, Albany, Georgia, to Bert Charles and Louise Charles, his wife, on September 8, 1977. Closing date is November 22, 1977. The price was \$25,125, with an earnest money deposit of \$1,000. Broker's commission is 6%. The buyers are assuming a mortgage of \$19,832.00, at 6% interest. Mortgage payment (interest and principal) of \$138.34, payable on the first day of each month. The sellers are taking back a purchase money mortgage of \$3,000, with interest at 7%. Tenant has paid \$220 rent for November. The property is assessed at \$8,800 and tax rate is 47.90 mills. Taxes are due October 1 of each calendar year and were paid in full by the sellers. Purchasers are buying rugs and drapes for \$250. State deed transfer stamps are at the rate of \$.10 per \$100. Preparation of deed is \$15.00. Preparation of second mortgage and note is \$15.00 and intangible tax is \$1.50 per \$500. Buyers are assuming comprehensive insurance policy, dated July 1, 1977. Annual premium is \$108.00. Title search is \$150, to be paid by buyer. There is an outstanding paving lien of \$121. Prepare a closing statement for buyer and seller, using a 30-day month:

A.

CLOSING STATEMENT FOR BUYERS
BERT CHARLES AND LOUISE CHARLES, HIS WIFE
DATE: NOVEMBER 22, 1977

	Debits	Credits
Purchase Price	\$25,125.00	
Rugs and Drapes	250.00	
Prepaid Taxes		
38 days owed by buyers	44.46	
218 days insurance	65.40	
Earnest money deposit		1,000.00
First Mortgage Assumed		19,832.00
Accrued Interest 11/1 to 11/22		72.71
Second Mortgage		3,000.00
8 days' Rent		58.67
Title fee	150.00	
Preparation Second Mortgage	15.00	
Recording Deed & Mortgage	8.00	
Intangible Tax	9.00	
Balance owed by Buyers		1,703.48
	\$25,666.86	\$25,666.86

CLOSING STATEMENT FOR SELLERS
ADAM BAKER AND HELEN BAKER, HIS WIFE
DATE: NOVEMBER 22, 1977

	Debits	Credits
Purchase Price		\$25,125.00
Rugs and Drapes		250.00
Taxes 38 days		44.46
218 days' insurance		65.40
Earnest Money Deposit	\$1,000.00	
First Mortgage Assumed	19,832.00	
Accrued Interest 11/1 to 11/22	72.71	
Second Mortgage	3,000.00	
8 days' Rent	58.67	
Balance, Commission	507.50	
State Transfer Tax	25.13	

Preparation of Deed	15.00	
Paving Lien	121.00	
Cash Balance, due Sellers	<u>852.85</u>	
	\$25,484.86	\$25,484.86

552. Q. On September 15, 1977 an apartment building was conveyed by Louis Stone and Louise Stone, his wife, to Sam Lewis and Jean Lewis, his wife, for a total consideration price of \$125,000. The purchaser paid deposit money of \$8,000 to the broker who retained it on account of commission. The taxes amounting to \$2,520 have been paid by the seller. The fire insurance policy expires in three months from September 15, 1977 and the premium paid by the seller was \$468 for three years. The liability insurance expires in six months from September 15, 1977 and the premium paid by the seller was \$72 for a one-year policy. The rentals amounting to \$2,500 per month have been paid to October 1, 1977. The water rent is paid to August 15, 1977 and amounts to \$150 per quarter. The sewer rent is also paid to August 15, 1977 and amounts to \$90 per quarter. Taxes, insurance, rents, water rent and sewer rent were prorated as of date of transfer, i.e., September 15, 1977. Transfer stamps are to be equally divided (1% of value for state and same rate for municipality); broker's commission of 7%, preparation of deed (\$20), Notary fee for deed (\$1), buyer's title fee (\$585.50), settlement fee (\$50), recording deed (\$7) are to be considered and properly charged in this settlement.

A.		Debit	Credit
	Consideration		\$125,000.00
	3½ months' taxes		735.00
	3 months' fire insurance		39.00
	6 months' liability insurance		36.00
	Deposit money	\$ 8,000.00	
	½ month rent—September 15 to October 1	1,250.00	
	Water rent from August 15 to September 15	50.00	
	Sewer rent from August 15 to September 15	30.00	
	Balance due	<u>116,480.00</u>	
		<u>\$125,810.00</u>	<u>\$125,810.00</u>
	With Louis Stone, et ux, SELLERS		
	Balance due		\$116,480.00
	Transfer stamps	\$ 1,250.00	
	Commission (balance)	750.00	
	Preparation of deed	20.00	
	Notary fee	1.00	
	Net balance due sellers	<u>114,459.00</u>	
		<u>\$116,480.00</u>	<u>\$116,480.00</u>
	With Sam Lewis, et ux, PURCHASERS		
	Balance due sellers		\$116,480.00
	Transfer Stamps		1,250.00
	Title fee		585.50
	Settlement fee		50.00
	Recording deed		<u>7.00</u>
	Total		<u>\$118,372.50</u>

ANSWERS

Brokerage

True and False Questions

- | | | | |
|-----------|-----------|------------|------------|
| 1. False | 38. True | 75. True | 112. False |
| 2. False | 39. True | 76. False | 113. True |
| 3. False | 40. True | 77. True | 114. False |
| 4. True | 41. False | 78. False | 115. True |
| 5. True | 42. True | 79. True | 116. False |
| 6. True | 43. False | 80. True | 117. False |
| 7. False | 44. False | 81. True | 118. False |
| 8. False | 45. True | 82. True | 119. True |
| 9. False | 46. False | 83. True | 120. True |
| 10. False | 47. False | 84. False | 121. True |
| 11. False | 48. True | 85. True | 122. False |
| 12. False | 49. False | 86. False | 123. False |
| 13. False | 50. False | 87. False | 124. False |
| 14. False | 51. False | 88. True | 125. False |
| 15. False | 52. True | 89. False | 126. False |
| 16. True | 53. False | 90. True | 127. False |
| 17. False | 54. True | 91. True | 128. False |
| 18. True | 55. False | 92. True | 129. False |
| 19. True | 56. True | 93. False | 130. False |
| 20. False | 57. True | 94. True | 131. True |
| 21. False | 58. False | 95. False | 132. False |
| 22. False | 59. False | 96. True | 133. True |
| 23. False | 60. False | 97. True | 134. True |
| 24. True | 61. True | 98. True | 135. True |
| 25. False | 62. True | 99. False | 136. True |
| 26. False | 63. False | 100. True | 137. True |
| 27. True | 64. False | 101. True | 138. True |
| 28. False | 65. False | 102. False | 139. False |
| 29. False | 66. False | 103. True | 140. True |
| 30. False | 67. False | 104. False | 141. False |
| 31. False | 68. False | 105. True | 142. True |
| 32. True | 69. True | 106. True | 143. False |
| 33. True | 70. True | 107. False | 144. True |
| 34. False | 71. False | 108. True | 145. True |
| 35. False | 72. True | 109. True | 146. True |
| 36. True | 73. True | 110. True | 147. False |
| 37. False | 74. False | 111. False | 148. True |

149. True	200. True	251. False	302. False
150. True	201. False	252. True	303. False
151. False	202. True	253. True	304. True
152. False	203. False	254. True	305. False
153. False	204. True	255. False	306. True
154. False	205. True	256. False	307. False
155. True	206. False	257. False	308. False
156. True	207. True	258. True	309. True
157. False	208. True	259. True	310. False
158. False	209. True	260. False	311. True
159. True	210. False	261. False	312. True
160. False	211. False	262. True	313. False
161. False	212. True	263. True	314. True
162. False	213. False	264. True	315. True
163. False	214. True	265. False	316. False
164. False	215. False	266. False	317. True
165. False	216. False	267. False	318. True
166. True	217. True	268. False	319. False
167. True	218. False	269. False	320. False
168. False	219. True	270. True	321. False
169. False	220. True	271. True	322. True
170. False	221. True	272. True	323. True
171. False	222. False	273. False	324. False
172. True	223. True	274. False	325. True
173. True	224. False	275. False	326. False
174. False	225. False	276. False	327. False
175. False	226. True	277. True	328. False
176. True	227. True	278. True	329. False
177. True	228. False	279. True	330. False
178. True	229. True	280. True	331. True
179. False	230. True	281. False	332. False
180. True	231. True	282. False	333. True
181. False	232. False	283. False	334. False
182. False	233. False	284. False	335. True
183. False	234. False	285. False	336. True
184. False	235. False	286. False	337. True
185. False	236. True	287. False	338. False
186. True	237. True	288. False	339. True
187. True	238. True	289. True	340. True
188. False	239. True	290. False	341. True
189. True	240. False	291. True	342. True
190. False	241. True	292. False	343. True
191. False	242. False	293. False	344. False
192. True	243. False	294. False	345. True
193. True	244. False	295. False	346. True
194. False	245. False	296. False	347. True
195. True	246. True	297. True	348. False
196. False	247. True	298. False	349. False
197. False	248. False	299. True	
198. False	249. True	300. False	
199. False	250. False	301. False	

Multiple Choice Questions

- | | | | |
|-------|-------|------------|--------|
| 1. d | 48. d | 95. a | 129. c |
| 2. a | 49. b | 96. d | 130. b |
| 3. c | 50. c | 97. d | 131. a |
| 4. c | 51. b | 98. c | 132. b |
| 5. a | 52. a | 99. d | 133. d |
| 6. d | 53. b | 100. b | 134. d |
| 7. b | 54. d | 101. c | 135. c |
| 8. c | 55. a | 102. c | 136. b |
| 9. d | 56. c | 103. b | 137. b |
| 10. d | 57. d | 104. b | 138. c |
| 11. b | 58. d | 105. c | 139. d |
| 12. d | 59. c | 106. a | 140. c |
| 13. c | 60. d | 107. d | 141. d |
| 14. b | 61. b | 108. d | 142. c |
| 15. c | 62. d | 109. a | 143. b |
| 16. a | 63. b | 110. d | 144. a |
| 17. b | 64. b | 111. a | 145. c |
| 18. b | 65. d | 112. c | 146. d |
| 19. b | 66. d | 113. c | 147. c |
| 20. d | 67. c | 114. d | 148. d |
| 21. b | 68. c | 115. 1.) b | 149. b |
| 22. b | 69. b | 2.) b | 150. a |
| 23. b | 70. a | 3.) d | 151. a |
| 24. c | 71. c | 4.) a | 152. b |
| 25. c | 72. a | 116. d | 153. a |
| 26. b | 73. d | 117. b | 154. b |
| 27. b | 74. d | 118. (a) F | 155. c |
| 28. d | 75. c | (b) F | 156. b |
| 29. d | 76. b | (c) F | 157. b |
| 30. a | 77. a | (d) F | 158. c |
| 31. a | 78. b | 119. a | 159. b |
| 32. d | 79. d | 120. c | 160. c |
| 33. b | 80. d | 121. b | 161. b |
| 34. c | 81. c | 122. b | 162. a |
| 35. c | 82. b | 123. b | 163. b |
| 36. d | 83. c | 124. (a) T | 164. d |
| 37. b | 84. a | (b) T | 165. c |
| 38. d | 85. c | (c) F | 166. c |
| 39. a | 86. e | (d) T | 167. d |
| 40. c | 87. e | (e) F | 168. d |
| 41. c | 88. a | 125. (a) T | 169. c |
| 42. a | 89. b | (b) T | 170. c |
| 43. b | 90. c | (c) F | 171. d |
| 44. d | 91. a | (d) F | 172. c |
| 45. c | 92. d | 126. e | 173. e |
| 46. a | 93. d | 127. d | 174. d |
| 47. b | 94. c | 128. b | 175. b |

176. a	191. b	206. d	221. b
177. b	192. d	207. b	222. b
178. c	193. d	208. d	223. a
179. c	194. d	209. c	224. d
180. b	195. c	210. b	225. b
181. c	196. b	211. d	226. b
182. b	197. d	212. a	227. c
183. d	198. c	213. b	228. b
184. b	199. c	214. d	229. a
185. c	200. b	215. a	230. d
186. d	201. b	216. c	231. d
187. b	202. d	217. b	232. d
188. d	203. c	218. b	233. d
189. d	204. b	219. a	234. c
190. a	205. c	220. d	235. b

Federal Fair Housing Law

True and False Questions

- | | | | |
|-----------|-----------|-----------|-----------|
| 1. False | 21. True | 41. False | 61. True |
| 2. False | 22. True | 42. False | 62. True |
| 3. False | 23. True | 43. True | 63. True |
| 4. False | 24. True | 44. True | 64. False |
| 5. True | 25. True | 45. True | 65. True |
| 6. True | 26. True | 46. True | 66. True |
| 7. True | 27. False | 47. True | 67. True |
| 8. False | 28. False | 48. True | 68. True |
| 9. True | 29. False | 49. False | 69. False |
| 10. False | 30. True | 50. False | 70. True |
| 11. False | 31. False | 51. False | 71. False |
| 12. False | 32. False | 52. False | 72. False |
| 13. True | 33. False | 53. False | 73. False |
| 14. True | 34. False | 54. True | 74. False |
| 15. False | 35. False | 55. False | 75. False |
| 16. False | 36. False | 56. True | 76. False |
| 17. False | 37. False | 57. False | 77. True |
| 18. False | 38. False | 58. False | |
| 19. True | 39. False | 59. False | |
| 20. False | 40. False | 60. False | |

Multiple Choice Questions

- | | | | |
|-------|-------|-------|-------|
| 1. d | 12. a | 23. d | 34. a |
| 2. d | 13. c | 24. d | 35. c |
| 3. d | 14. c | 25. d | 36. d |
| 4. b | 15. d | 26. b | 37. c |
| 5. d | 16. d | 27. a | 38. c |
| 6. d | 17. d | 28. a | 39. d |
| 7. d | 18. d | 29. c | 40. d |
| 8. d | 19. d | 30. a | 41. b |
| 9. c | 20. b | 31. b | |
| 10. c | 21. d | 32. c | |
| 11. d | 22. b | 33. d | |

Agreements of Sale

True and False Questions

- | | | | |
|-----------|--------------|--------------|------------|
| 1. False | 38. False | 70. False | 100. True |
| 2. True | 39. False | 71. False | 101. False |
| 3. False | 40. False | 72. 1.) True | 102. True |
| 4. False | 41. False | 2.) False | 103. False |
| 5. True | 42. True | 3.) False | 104. False |
| 6. False | 43. False | 4.) True | 105. True |
| 7. False | 44. True | 5.) True | 106. False |
| 8. False | 45. True | 6.) True | 107. True |
| 9. True | 46. False | 7.) False | 108. True |
| 10. False | 47. False | 8.) False | 109. True |
| 11. True | 48. True | 73. False | 110. False |
| 12. True | 49. True | 74. False | 111. True |
| 13. False | 50. False | 75. False | 112. False |
| 14. False | 51. True | 76. False | 113. True |
| 15. False | 52. False | 77. True | 114. True |
| 16. True | 53. False | 78. False | 115. True |
| 17. False | 54. False | 79. False | 116. True |
| 18. True | 55. True | 80. True | 117. True |
| 19. True | 56. False | 81. True | 118. True |
| 20. True | 57. True | 82. False | 119. True |
| 21. True | 58. False | 83. True | 120. False |
| 22. False | 59. True | 84. False | 121. False |
| 23. False | 60. False | 85. True | 122. False |
| 24. True | 61. True | 86. True | 123. False |
| 25. True | 62. 1.) True | 87. False | 124. True |
| 26. False | 2.) True | 88. False | 125. False |
| 27. True | 3.) True | 89. True | 126. True |
| 28. False | 4.) True | 90. False | 127. True |
| 29. True | 5.) True | 91. True | 128. True |
| 30. True | 6.) False | 92. True | 129. True |
| 31. True | 63. False | 93. False | 130. True |
| 32. False | 64. False | 94. True | 131. True |
| 33. False | 65. False | 95. False | 132. True |
| 34. False | 66. False | 96. True | 133. False |
| 35. True | 67. True | 97. True | 134. True |
| 36. True | 68. True | 98. False | 135. True |
| 37. True | 69. True | 99. True | 136. False |

137. False	179. False	221. True	263. False
138. False	180. False	222. False	264. False
139. False	181. True	223. True	265. True
140. True	182. True	224. True	266. False
141. True	183. True	225. True	267. True
142. True	184. False	226. True	268. False
143. True	185. False	227. False	269. True
144. True	186. False	228. False	270. True
145. False	187. False	229. False	271. False
146. True	188. False	230. False	272. False
147. True	189. True	231. True	273. False
148. False	190. True	232. False	274. True
149. True	191. False	233. False	275. True
150. False	192. False	234. False	276. True
151. True	193. True	235. True	277. True
152. True	194. True	236. False	278. True
153. False	195. False	237. False	279. True
154. False	196. False	238. False	280. False
155. True	197. False	239. True	281. True
156. False	198. False	240. False	282. False
157. True	199. False	241. False	283. True
158. False	200. True	242. False	284. True
159. False	201. False	243. False	285. True
160. True	202. True	244. True	286. False
161. True	203. True	245. False	287. False
162. True	204. True	246. True	288. False
163. True	205. True	247. True	289. True
164. False	206. False	248. True	290. False
165. True	207. True	249. False	291. True
166. False	208. False	250. True	292. False
167. False	209. False	251. False	293. True
168. True	210. True	252. False	294. True
169. False	211. True	253. False	295. True
170. False	212. False	254. True	296. True
171. True	213. True	255. True	297. True
172. False	214. False	256. False	298. True
173. False	215. True	257. True	299. True
174. True	216. False	258. True	300. True
175. False	217. True	259. False	301. True
176. True	218. True	260. True	302. False
177. False	219. False	261. False	303. True
178. False	220. True	262. True	304. True

Multiple Choice Questions

- | | | | |
|------|-------|-------|-------|
| 1. d | 6. a | 11. a | 16. b |
| 2. c | 7. a | 12. b | 17. c |
| 3. c | 8. c | 13. c | 18. c |
| 4. c | 9. c | 14. b | 19. c |
| 5. d | 10. b | 15. c | 20. c |

21. a	71. d	121. b	171. d
22. a	72. d	122. d	172. b
23. a	73. a	123. c	173. c
24. d	74. d	124. c	174. a
25. a	75. d	125. a	175. c
26. b	76. b	126. d	176. a
27. c	77. d	127. c	177. a
28. c	78. c	128. b	178. b
29. e	79. a	129. d	179. b
30. c	80. b	130. b	180. b
31. c	81. c	131. c	181. a
32. b	82. b	132. c	182. b
33. d	83. c	133. b	183. b
34. b	84. b	134. b	184. a
35. b	85. d	135. a	185. b
36. b	86. b	136. c	186. a
37. c	87. b	137. a	187. b
38. b	88. b	138. b	188. b
39. d	89. b	139. c	189. d
40. b	90. a	140. b	190. a
41. d	91. c	141. c	191. a
42. c	92. b	142. c	192. d
43. d	93. d	143. c	193. d
44. a	94. c	144. a	194. e
45. c	95. b	145. c	195. b
46. a	96. d	146. b	196. e
47. a	97. c	147. b	197. c
48. d	98. c	148. b	198. b
49. a	99. b	149. c	199. d
50. c	100. d	150. b	200. a
51. b	101. c	151. b	201. a
52. d	102. d	152. a	202. b
53. a	103. b	153. e	203. d
54. a	104. a	154. c	204. a
55. b	105. b	155. b	205. c
56. a	106. b	156. c	206. d
57. d	107. d	157. a	207. d
58. d	108. c	158. d	208. d
59. b	109. a	159. c	209. d
60. c	110. b	160. b	210. c
61. c	111. d	161. c	211. a
62. a	112. c	162. b	212. b
63. d	113. a	163. a	213. b
64. c	114. b	164. c	214. d
65. a	115. d	165. c	215. c
66. b	116. a	166. b	216. c
67. d	117. d	167. c	217. d
68. d	118. b	168. c	218. d
69. d	119. b	169. d	219. b
70. b	120. a	170. b	220. a

221. b	229. a	237. d	245. d
222. b	230. b	238. a	246. d
223. a	231. b	239. a	247. c
224. c	232. d	240. d	248. b
225. c	233. d	241. c	249. c
226. d	234. c	242. c	250. d
227. c	235. a	243. a	251. d
228. c	236. a	244. b	

Deeds

True and False Questions

- | | | | |
|-----------|-----------|------------|------------|
| 1. False | 38. True | 75. True | 112. False |
| 2. False | 39. False | 76. True | 113. True |
| 3. True | 40. True | 77. False | 114. True |
| 4. False | 41. False | 78. True | 115. True |
| 5. False | 42. True | 79. False | 116. False |
| 6. False | 43. False | 80. False | 117. True |
| 7. True | 44. False | 81. False | 118. True |
| 8. True | 45. False | 82. False | 119. False |
| 9. False | 46. True | 83. True | 120. False |
| 10. False | 47. False | 84. False | 121. False |
| 11. False | 48. True | 85. False | 122. True |
| 12. True | 49. False | 86. True | 123. False |
| 13. True | 50. False | 87. True | 124. True |
| 14. False | 51. False | 88. False | 125. False |
| 15. False | 52. False | 89. False | 126. False |
| 16. False | 53. True | 90. True | 127. False |
| 17. False | 54. False | 91. True | 128. True |
| 18. False | 55. False | 92. False | 129. True |
| 19. True | 56. False | 93. True | 130. True |
| 20. True | 57. True | 94. False | 131. False |
| 21. True | 58. False | 95. False | 132. False |
| 22. False | 59. True | 96. True | 133. False |
| 23. False | 60. True | 97. True | 134. True |
| 24. False | 61. False | 98. False | 135. True |
| 25. True | 62. True | 99. True | 136. True |
| 26. True | 63. False | 100. False | 137. True |
| 27. True | 64. False | 101. True | 138. True |
| 28. False | 65. True | 102. False | 139. False |
| 29. True | 66. False | 103. True | 140. False |
| 30. False | 67. False | 104. True | 141. True |
| 31. True | 68. False | 105. False | 142. True |
| 32. False | 69. False | 106. True | 143. True |
| 33. True | 70. False | 107. False | 144. True |
| 34. False | 71. True | 108. True | 145. False |
| 35. False | 72. True | 109. False | 146. False |
| 36. True | 73. False | 110. False | 147. True |
| 37. True | 74. False | 111. False | 148. True |

149. True	199. False	249. False	299. False
150. False	200. False	250. True	300. True
151. True	201. False	251. False	301. False
152. False	202. False	252. True	302. True
153. True	203. False	253. False	303. True
154. False	204. True	254. False	304. False
155. False	205. False	255. False	305. False
156. False	206. False	256. False	306. False
157. False	207. True	257. False	307. True
158. True	208. True	258. True	308. True
159. False	209. False	259. False	309. True
160. False	210. False	260. False	310. True
161. True	211. True	261. False	311. False
162. True	212. False	262. True	312. False
163. False	213. False	263. True	313. False
164. True	214. True	264. True	314. False
165. False	215. True	265. True	315. True
166. False	216. True	266. True	316. True
167. True	217. False	267. True	317. False
168. True	218. False	268. False	318. False
169. True	219. True	269. True	319. True
170. False	220. True	270. False	320. True
171. True	221. True	271. False	321. True
172. True	222. True	272. True	322. True
173. False	223. True	273. False	323. False
174. False	224. True	274. False	324. False
175. False	225. False	275. True	325. False
176. False	226. True	276. True	326. True
177. True	227. True	277. False	327. False
178. False	228. False	278. False	328. False
179. True	229. False	279. True	329. True
180. True	230. True	280. False	330. True
181. False	231. False	281. True	331. True
182. True	232. False	282. False	332. False
183. False	233. True	283. False	333. False
184. False	234. True	284. True	334. True
185. True	235. True	285. False	335. True
186. False	236. False	286. False	336. True
187. True	237. True	287. True	337. False
188. False	238. False	288. False	338. True
189. True	239. False	289. False	339. True
190. False	240. False	290. True	340. False
191. False	241. False	291. False	341. False
192. False	242. True	292. True	342. True
193. True	243. False	293. True	343. True
194. False	244. False	294. True	344. True
195. False	245. True	295. True	345. False
196. True	246. True	296. True	346. False
197. False	247. False	297. False	347. True
198. True	248. True	298. True	348. True

349. True	368. True	387. False	406. True
350. True	369. True	388. True	407. True
351. True	370. False	389. False	408. True
352. True	371. False	390. False	409. True
353. False	372. False	391. True	410. False
354. True	373. True	392. True	411. False
355. True	374. False	393. False	412. True
356. False	375. True	394. False	413. False
357. False	376. False	395. False	414. True
358. True	377. True	396. True	415. False
359. False	378. True	397. True	416. False
360. True	379. True	398. True	417. False
361. False	380. True	399. False	418. True
362. True	381. True	400. True	419. True
363. False	382. False	401. True	420. False
364. True	383. False	402. False	421. True
365. False	384. False	403. False	422. False
366. False	385. True	404. False	
367. False	386. False	405. True	

Multiple Choice Questions

1. c	29. c	57. b	85. b
2. a	30. b	58. a	86. d
3. c	31. b	59. c	87. c
4. d	32. c	60. c	88. c
5. b	33. c	61. b	89. c
6. c	34. a	62. c	90. b
7. a	35. a	63. a	91. d
8. d	36. d	64. a	92. d
9. b	37. a	65. b	93. c
10. b	38. a	66. c	94. b
11. b	39. b	67. b	95. c
12. c	40. b	68. c	96. b
13. c	41. d	69. d	97. d
14. c	42. c	70. b	98. b
15. b	43. e	71. a	99. d
16. c	44. c	72. c	100. a
17. b	45. b	73. d	101. d
18. b	46. d	74. c	102. b
19. c	47. a,b,d,f	75. a	103. d
20. a	48. c	76. c	104. c
21. d	49. c	77. a	105. b
22. a	50. c	78. a	106. d
23. c	51. b	79. b	107. b
24. b	52. a	80. d	108. c
25. c	53. d	81. b	109. d
26. c	54. a	82. a	110. a
27. b	55. a	83. c	111. d
28. c	56. b	84. d	112. b

113. b	163. d	213. c	263. c
114. c	164. b	214. d	264. c
115. a	165. b	215. c	265. b
116. d	166. d	216. b	266. c
117. d	167. d	217. c	267. c
118. b	168. c	218. a	268. d
119. d	169. d	219. b	269. c
120. a	170. b	220. a	270. d
121. d	171. b	221. d	271. d
122. d	172. b	222. d	272. b
123. d	173. d	223. d	273. b
124. c	174. b	224. b	274. b
125. b	175. c	225. a	275. b
126. d	176. b	226. b	276. d
127. c,e	177. b	227. b	277. d
128. b	178. d	228. b	278. c
129. a	179. d	229. d	279. a
130. b	180. d	230. c	280. c
131. c	181. b	231. d	281. c
132. a	182. b	232. a	282. d
133. a,b,d	183. c	233. b	283. b
134. c	184. a	234. c	284. a
135. b	185. b	235. d	285. c
136. b	186. c	236. b	286. c
137. d	187. b	237. b	287. a
138. c	188. b	238. b	288. c
139. c	189. b	239. b	289. a
140. a,c,d,f	190. c	240. b	290. b
141. b	191. b	241. d	291. a
142. a	192. b	242. c	292. d
143. b	193. a	243. a	293. a
144. c	194. c	244. c	294. d
145. c	195. a	245. a	295. b
146. b	196. d	246. c	296. b
147. a	197. c	247. c	297. c
148. a	198. d	248. a	298. d
149. a	199. c	249. c	299. c
150. c	200. d	250. d	300. b
151. b	201. b	251. a	301. b
152. b	202. c	252. c	302. c
153. b,d	203. c	253. b	303. c
154. d	204. d	254. a	304. a
155. b	205. a	255. a	305. c
156. a	206. c	256. b	306. d
157. b	207. b	257. d	307. b
158. c	208. c	258. a	308. d
159. b	209. a	259. c	309. c
160. c	210. b	260. b	310. d
161. c	211. c	261. a	311. b
162. c	212. a	262. d	312. b

313. b	318. c	323. b	328. c
314. d	319. b	324. c	329. a
315. d	320. a	325. a	
316. c	321. c	326. b	
317. b	322. d	327. b	

Financing of Real Estate

True and False Questions

- | | | | |
|-----------|-----------|------------|------------|
| 1. True | 38. False | 75. False | 112. True |
| 2. True | 39. True | 76. True | 113. False |
| 3. False | 40. False | 77. False | 114. True |
| 4. False | 41. True | 78. True | 115. False |
| 5. False | 42. False | 79. True | 116. False |
| 6. True | 43. True | 80. False | 117. True |
| 7. True | 44. True | 81. True | 118. False |
| 8. False | 45. False | 82. False | 119. False |
| 9. True | 46. True | 83. False | 120. False |
| 10. False | 47. False | 84. False | 121. False |
| 11. True | 48. False | 85. True | 122. False |
| 12. False | 49. True | 86. True | 123. False |
| 13. True | 50. True | 87. False | 124. False |
| 14. True | 51. False | 88. False | 125. True |
| 15. False | 52. False | 89. True | 126. True |
| 16. True | 53. True | 90. True | 127. False |
| 17. False | 54. False | 91. False | 128. False |
| 18. True | 55. True | 92. True | 129. False |
| 19. False | 56. False | 93. True | 130. True |
| 20. True | 57. False | 94. True | 131. False |
| 21. True | 58. True | 95. True | 132. True |
| 22. False | 59. False | 96. False | 133. False |
| 23. True | 60. True | 97. True | 134. False |
| 24. True | 61. True | 98. True | 135. True |
| 25. False | 62. False | 99. False | 136. True |
| 26. True | 63. False | 100. False | 137. False |
| 27. False | 64. False | 101. True | 138. True |
| 28. True | 65. False | 102. True | 139. True |
| 29. True | 66. True | 103. False | 140. False |
| 30. True | 67. False | 104. True | 141. False |
| 31. False | 68. True | 105. True | 142. True |
| 32. False | 69. True | 106. True | 143. True |
| 33. True | 70. False | 107. True | 144. False |
| 34. True | 71. True | 108. False | 145. False |
| 35. True | 72. True | 109. True | 146. True |
| 36. False | 73. False | 110. True | 147. True |
| 37. True | 74. True | 111. True | 148. True |

149. True	157. True	165. True	173. True
150. True	158. False	166. False	174. False
151. False	159. True	167. True	175. True
152. True	160. False	168. True	176. False
153. False	161. True	169. False	177. False
154. False	162. True	170. False	178. False
155. True	163. True	171. True	179. True
156. True	164. True	172. False	180. False

Multiple Choice Questions

1. c	30. d	59. a	88. c
2. b	31. b	60. c	89. d
3. a	32. d	61. d	90. c
4. d	33. d	62. a	91. b
5. a	34. b	63. b	92. a
6. b	35. d	64. a	93. b
7. c	36. b	65. a	94. a
8. c	37. c	66. d	95. b
9. a	38. a	67. a	96. b
10. b	39. b	68. a	97. b
11. b	40. d	69. c	98. b
12. a	41. b	70. d	99. c
13. a	42. b	71. b	100. a
14. b	43. b	72. c	101. b
15. b	44. c	73. b	102. b
16. b	45. b	74. a	103. a
17. c	46. d	75. b	104. c
18. c	47. b	76. d	105. d
19. a	48. c	77. a	106. c
20. d	49. a	78. a	107. a
21. a	50. b	79. b	108. c
22. b	51. c	80. b	109. b
23. b	52. b	81. d	110. b
24. b	53. d	82. b	111. d
25. d	54. c	83. c	112. c
26. b	55. a	84. b	113. c
27. d	56. c	85. a	
28. b	57. a	86. d	
29. a	58. b	87. a	

Mortgages

True and False Questions

- | | | | |
|-----------|-----------|------------|------------|
| 1. False | 38. True | 75. True | 112. True |
| 2. True | 39. True | 76. False | 113. True |
| 3. True | 40. False | 77. True | 114. True |
| 4. False | 41. False | 78. True | 115. False |
| 5. False | 42. False | 79. False | 116. True |
| 6. True | 43. False | 80. True | 117. True |
| 7. False | 44. True | 81. True | 118. True |
| 8. True | 45. False | 82. False | 119. False |
| 9. False | 46. False | 83. False | 120. False |
| 10. True | 47. True | 84. False | 121. False |
| 11. False | 48. False | 85. False | 122. True |
| 12. True | 49. True | 86. True | 123. True |
| 13. False | 50. False | 87. False | 124. True |
| 14. False | 51. False | 88. True | 125. True |
| 15. True | 52. False | 89. False | 126. False |
| 16. False | 53. True | 90. True | 127. True |
| 17. False | 54. False | 91. False | 128. False |
| 18. False | 55. True | 92. False | 129. False |
| 19. True | 56. False | 93. False | 130. True |
| 20. False | 57. True | 94. True | 131. True |
| 21. True | 58. True | 95. True | 132. True |
| 22. False | 59. True | 96. False | 133. False |
| 23. True | 60. False | 97. False | 134. False |
| 24. False | 61. False | 98. True | 135. False |
| 25. True | 62. True | 99. False | 136. False |
| 26. False | 63. False | 100. False | 137. False |
| 27. True | 64. True | 101. True | 138. False |
| 28. False | 65. False | 102. False | 139. True |
| 29. True | 66. False | 103. True | 140. True |
| 30. True | 67. True | 104. False | 141. True |
| 31. True | 68. False | 105. False | 142. False |
| 32. False | 69. True | 106. True | 143. False |
| 33. False | 70. False | 107. True | 144. True |
| 34. False | 71. True | 108. True | 145. False |
| 35. True | 72. True | 109. False | 146. False |
| 36. False | 73. True | 110. False | 147. True |
| 37. False | 74. False | 111. False | 148. True |

149. False	153. False	157. False	161. False
150. False	154. False	158. True	162. True
151. True	155. True	159. False	163. False
152. False	156. False	160. True	164. True

Multiple Choice Questions

1. c	19. b	37. c	55. c
2. d	20. c	38. d	56. a
3. a	21. c	39. d	57. d
4. b	22. b	40. c	58. b
5. c	23. c	41. c	59. d
6. b	24. b	42. b	60. b
7. c	25. b	43. b	61. b
8. c	26. c	44. a	62. c
9. a	27. c	45. a	63. c
10. c	28. a	46. d	64. c
11. a	29. a	47. c	65. b
12. c	30. b	48. a	66. b
13. d	31. b	49. a	67. a
14. a	32. b	50. a	68. c
15. a	33. a	51. c	69. d
16. c	34. c	52. d	70. a
17. b	35. b	53. a	71. d
18. e	36. b	54. b	72. b

Judgments

True and False Questions

- | | | | |
|-----------|-----------|-----------|-----------|
| 1. False | 18. True | 35. False | 52. False |
| 2. True | 19. True | 36. True | 53. False |
| 3. True | 20. False | 37. True | 54. True |
| 4. False | 21. True | 38. False | 55. False |
| 5. True | 22. False | 39. False | 56. True |
| 6. False | 23. False | 40. True | 57. False |
| 7. True | 24. True | 41. True | 58. True |
| 8. True | 25. False | 42. True | 59. False |
| 9. False | 26. False | 43. False | 60. False |
| 10. True | 27. True | 44. False | 61. True |
| 11. True | 28. True | 45. True | 62. True |
| 12. True | 29. False | 46. False | 63. True |
| 13. False | 30. False | 47. True | 64. False |
| 14. False | 31. True | 48. False | 65. True |
| 15. True | 32. True | 49. False | 66. True |
| 16. False | 33. True | 50. False | 67. False |
| 17. True | 34. True | 51. True | |

Multiple Choice Questions

- | | | | |
|------|-------|-------|-------|
| 1. b | 10. b | 19. d | 28. a |
| 2. c | 11. d | 20. b | 29. c |
| 3. a | 12. b | 21. b | 30. a |
| 4. a | 13. d | 22. a | 31. a |
| 5. b | 14. c | 23. a | 32. d |
| 6. d | 15. b | 24. c | 33. a |
| 7. c | 16. c | 25. c | 34. a |
| 8. a | 17. a | 26. c | |
| 9. b | 18. b | 27. b | |

Landlord and Tenant

True and False Questions

- | | | | |
|-----------|--------------|------------|------------|
| 1. True | 38. True | 74. True | 111. True |
| 2. True | 39. False | 75. False | 112. True |
| 3. False | 40. True | 76. True | 113. False |
| 4. True | 41. False | 77. False | 114. True |
| 5. False | 42. True | 78. True | 115. False |
| 6. False | 43. False | 79. True | 116. False |
| 7. False | 44. False | 80. False | 117. True |
| 8. True | 45. False | 81. False | 118. False |
| 9. False | 46. False | 82. False | 119. False |
| 10. False | 47. True | 83. True | 120. False |
| 11. True | 48. False | 84. True | 121. False |
| 12. False | 49. False | 85. True | 122. True |
| 13. True | 50. False | 86. False | 123. False |
| 14. False | 51. True | 87. False | 124. False |
| 15. False | 52. True | 88. True | 125. True |
| 16. True | 53. True | 89. False | 126. True |
| 17. False | 54. True | 90. False | 127. True |
| 18. True | 55. True | 91. True | 128. False |
| 19. False | 56. True | 92. False | 129. False |
| 20. False | 57. False | 93. True | 130. True |
| 21. True | 58. False | 94. False | 131. True |
| 22. False | 59. False | 95. True | 132. False |
| 23. False | 60. False | 96. True | 133. True |
| 24. True | 61. True | 97. False | 134. True |
| 25. True | 62. True | 98. True | 135. False |
| 26. False | 63. False | 99. True | 136. False |
| 27. False | 64. True | 100. False | 137. True |
| 28. True | 65. True | 101. False | 138. True |
| 29. True | 66. a) False | 102. True | 139. False |
| 30. False | b) True | 103. True | 140. True |
| 31. True | 67. False | 104. False | 141. False |
| 32. False | 68. True | 105. True | 142. True |
| 33. True | 69. True | 106. True | 143. False |
| 34. False | 70. False | 107. False | 144. False |
| 35. False | 71. True | 108. False | 145. False |
| 36. True | 72. False | 109. False | 146. False |
| 37. False | 73. True | 110. True | 147. True |

148. False	152. False	156. True	160. False
149. True	153. False	157. False	161. True
150. True	154. True	158. True	162. False
151. True	155. True	159. False	163. True

Multiple Choice Questions

1. b	25. a	49. d	73. c
2. d	26. c	50. b	74. c
3. c	27. b	51. a	75. b
4. c	28. a	52. c	76. c
5. d	29. c	53. c	77. d
6. a	30. d	54. c	78. a
7. d	31. b	55. a	79. a
8. b	32. c	56. d	80. c
9. c	33. d	57. a	81. d
10. b	34. b	58. a	82. a
11. b	35. c	59. c	83. b
12. c	36. b	60. c	84. c
13. c	37. d	61. d	85. b
14. c	38. c	62. a	86. a
15. b	39. a	63. a	87. b
16. b	40. c	64. a	88. a
17. c	41. d	65. c,d	89. c
18. d	42. b	66. c	90. c
19. a	43. b	67. b	91. b
20. b	44. b	68. b	92. c
21. d	45. a	69. c	93. b
22. b	46. b	70. c	94. d
23. b	47. c	71. a	95. b
24. c	48. a	72. b	

Valuation and Appraisal

True and False Questions

- | | | | |
|-----------|-----------|------------|------------|
| 1. False | 38. True | 75. False | 112. False |
| 2. True | 39. False | 76. True | 113. False |
| 3. True | 40. True | 77. True | 114. True |
| 4. True | 41. False | 78. True | 115. False |
| 5. True | 42. False | 79. True | 116. False |
| 6. True | 43. True | 80. True | 117. True |
| 7. False | 44. True | 81. True | 118. False |
| 8. True | 45. False | 82. True | 119. True |
| 9. True | 46. False | 83. False | 120. False |
| 10. False | 47. True | 84. False | 121. False |
| 11. False | 48. True | 85. True | 122. True |
| 12. False | 49. True | 86. True | 123. True |
| 13. False | 50. False | 87. False | 124. False |
| 14. True | 51. False | 88. True | 125. True |
| 15. True | 52. True | 89. False | 126. True |
| 16. True | 53. False | 90. False | 127. True |
| 17. True | 54. False | 91. True | 128. True |
| 18. True | 55. False | 92. False | 129. False |
| 19. False | 56. True | 93. True | 130. True |
| 20. True | 57. False | 94. False | 131. False |
| 21. True | 58. True | 95. True | 132. True |
| 22. True | 59. True | 96. True | 133. False |
| 23. True | 60. True | 97. True | 134. True |
| 24. False | 61. True | 98. True | 135. True |
| 25. True | 62. True | 99. True | 136. False |
| 26. True | 63. True | 100. False | 137. False |
| 27. False | 64. False | 101. False | 138. True |
| 28. False | 65. True | 102. False | 139. True |
| 29. True | 66. False | 103. True | 140. True |
| 30. True | 67. True | 104. False | 141. True |
| 31. False | 68. True | 105. False | 142. False |
| 32. True | 69. True | 106. True | 143. False |
| 33. True | 70. False | 107. False | 144. True |
| 34. True | 71. True | 108. False | 145. True |
| 35. True | 72. True | 109. False | 146. False |
| 36. False | 73. False | 110. False | 147. False |
| 37. False | 74. True | 111. False | 148. False |

149. True	154. True	159. False	164. True
150. True	155. True	160. False	165. True
151. False	156. True	161. False	166. True
152. False	157. False	162. True	167. False
153. False	158. True	163. True	

Multiple Choice Questions

1. b	19. b	37. b	55. d
2. b	20. a	38. b	56. d
3. d	21. d	39. d	57. b
4. c	22. d	40. a	58. b
5. d	23. a	41. a	59. a
6. a	24. b	42. c	60. b
7. b	25. d	43. d	61. a
8. b	26. b	44. c	62. a
9. c	27. c	45. b	63. c
10. c	28. a	46. c	64. b
11. c	29. b	47. d	65. a
12. c	30. d	48. d	66. c
13. d	31. b	49. c	67. c
14. d	32. a	50. b	68. b
15. a	33. b	51. c	69. b
16. b	34. c	52. e	70. c
17. b	35. c	53. a,b	
18. b	36. c	54. c	

License Laws

True and False Questions

- | | | | |
|-----------|-----------|------------|------------|
| 1. False | 38. False | 75. False | 112. True |
| 2. False | 39. False | 76. True | 113. True |
| 3. False | 40. True | 77. True | 114. True |
| 4. False | 41. True | 78. True | 115. True |
| 5. False | 42. True | 79. True | 116. True |
| 6. False | 43. False | 80. False | 117. False |
| 7. True | 44. False | 81. True | 118. True |
| 8. False | 45. False | 82. False | 119. True |
| 9. False | 46. True | 83. True | 120. False |
| 10. True | 47. True | 84. True | 121. False |
| 11. True | 48. False | 85. False | 122. True |
| 12. True | 49. False | 86. True | 123. False |
| 13. False | 50. False | 87. False | 124. False |
| 14. True | 51. True | 88. False | 125. True |
| 15. False | 52. True | 89. False | 126. False |
| 16. True | 53. False | 90. True | 127. True |
| 17. False | 54. False | 91. False | 128. False |
| 18. False | 55. True | 92. True | 129. False |
| 19. False | 56. True | 93. False | 130. True |
| 20. False | 57. False | 94. True | 131. False |
| 21. True | 58. True | 95. True | 132. False |
| 22. True | 59. False | 96. False | 133. True |
| 23. False | 60. False | 97. False | 134. True |
| 24. False | 61. True | 98. True | 135. False |
| 25. True | 62. False | 99. True | 136. False |
| 26. True | 63. True | 100. False | 137. True |
| 27. True | 64. True | 101. True | 138. False |
| 28. False | 65. True | 102. False | 139. False |
| 29. False | 66. False | 103. True | 140. True |
| 30. True | 67. True | 104. True | 141. False |
| 31. True | 68. False | 105. True | 142. True |
| 32. False | 69. False | 106. False | 143. True |
| 33. True | 70. False | 107. True | 144. True |
| 34. True | 71. False | 108. True | 145. False |
| 35. True | 72. True | 109. True | 146. False |
| 36. False | 73. False | 110. True | 147. True |
| 37. True | 74. True | 111. False | 148. True |

149. False	167. False	191. True	215. True
150. False	168. False	192. False	216. True
151. False	169. True	193. True	217. True
152. True	170. True	194. False	218. False
153. False	171. False	195. False	219. True
154. False	172. True	196. True	220. True
155. False	173. True	197. True	221. True
156. False	174. True	198. False	222. False
157. False	175. False	199. True	223. False
158. False	176. False	200. False	224. False
159. True	177. False	201. True	225. True
160. False	178. True	202. False	226. False
161. False	179. True	203. True	227. False
162. True	180. False	204. False	228. False
163. False	181. False	205. False	229. True
164. True	182. True	206. False	230. False
165. a) True	183. True	207. False	231. False
b) True	184. True	208. False	232. True
c) False	185. False	209. True	233. False
d) True	186. True	210. True	234. True
e) True	187. True	211. False	235. True
f) True	188. True	212. True	236. False
g) True	189. False	213. True	237. True
166. False	190. False	214. False	238. False

Multiple Choice Questions

1. d	24. c	47. c	70. c
2. c	25. d	48. a	71. c
3. c	26. c	49. d	72. c
4. d	27. d	50. b	73. b
5. c	28. d	51. d	74. d
6. d	29. b	52. e	75. d
7. d	30. d	53. d	76. c
8. d	31. a,c	54. c	77. a
9. a	32. c	55. b	78. b
10. a	33. b	56. c	79. c
11. d	34. b	57. d	80. b
12. b	35. d	58. c	81. c
13. b	36. d	59. c	82. c
14. d	37. b	60. d	83. b
15. d	38. b	61. d	84. d
16. c	39. d	62. b	85. c
17. b	40. a	63. b	86. a
18. a	41. c	64. a	87. c
19. a	42. a	65. b	88. c
20. c	43. d	66. b	89. d
21. c	44. c	67. c	90. c
22. a	45. b	68. b	91. a
23. b	46. a	69. c	92. d

93. a,b,c,d	100. c	107. c	114. b
94. d	101. c	108. d	115. c
95. b	102. b	109. c	116. c
96. a	103. d	110. a	117. b
97. b	104. a	111. b	
98. c	105. b	112. d	
99. c	106. c	113. c	

Condominiums, Co-ops, Syndications, Etc.

Multiple Choice Questions

CONDOMINIUMS and COOPERATIVES

- | | | | |
|------|------|-------|-------|
| 1. d | 5. a | 9. a | 13. a |
| 2. a | 6. b | 10. a | |
| 3. c | 7. d | 11. c | |
| 4. c | 8. d | 12. b | |

REAL ESTATE SYNDICATIONS

- | | | |
|------|------|------|
| 1. b | 3. c | 5. e |
| 2. b | 4. b | 6. c |

REAL ESTATE INVESTMENT TRUSTS

- | | | |
|------|------|------|
| 1. c | 3. b | 5. b |
| 2. b | 4. d | |

REAL ESTATE AS SECURITIES

- | | | | |
|------|------|------|------|
| 1. d | 2. b | 3. a | 4. d |
|------|------|------|------|

INTERSTATE LAND SALES FULL DISCLOSURE ACT ("The Act")

- | | | | |
|------|------|------|------|
| 1. b | 2. a | 3. b | 4. c |
|------|------|------|------|

Completed Solutions to Arithmetic Problems

1. $500 \text{ feet} \times 300 \text{ feet} = 150,000 \text{ sq. ft.}$
 $150,000 \text{ sq. ft.} \times \$.60 = \$90,000 \text{ cost of paving}$
 $500 \text{ feet} \times \$5.00 = \$2,500 \text{ cost of gutters and curbs}$
 $\$90,000 + \$2,500 + \$5,000 = \$97,500 \text{ total cost}$
2. $150,000 \text{ divided by } 300 = 500 \text{ spaces}$
3. Lot #2 equals Lot #1 + \$1,200
 Lot #3 equals Lot #1 + \$1,200 + \$1,600, or \$2,800
 Lot #1 + \$4,000 (increase) equals \$10,000
 $\$10,000 - \$4,000 = \$6,000$
 $\$6,000 \div 3 \text{ lots} = \$2,000 \text{ (1st lot)}$
 $\$2,000 + \$1,200 = \$3,200 \text{ (2nd lot)}$
 $\$3,200 + \$1,600 = \$4,800 \text{ (3rd lot)}$
 $\$2,000 + \$3,200 + \$4,800 = \$10,000 \text{ (total)}$
4. $8,000 \times \$1.75 = \$14,000 \text{ gross income}$
 $\$14,000 - \$7,000 = \$7,000 \text{ net return}$
 $\$7,000 \text{ divided by } \$72,000 = 9.72 + \text{ percent}$
5. $43,560 \text{ sq. ft. in one acre}$
 $2 \times 43,560 \text{ sq. ft.} = 87,120 \text{ sq. ft.}$
 $28 \text{ ft.} \times 210 \text{ ft.} = 5,880 \text{ sq. ft. (street area)}$
 $87,120 - 5,880 = 81,240 \text{ left for lots}$
 $60 \times 190 = 11,400 \text{ sq. ft., size of each lot}$
 $81,240 \div 11,400 = 7 \text{ lots}$
6. $\frac{1}{8} \text{ inch represents 1 foot}$
 $1 \text{ inch} = 8 \times 1 \text{ foot, or 8 feet}$
 $6\frac{1}{2} \times 8 \text{ feet} = 52 \text{ feet}$
7. $90 \times \$250 = \$22,500.00 - \text{King's offer}$
 $90 \text{ feet} \times 180 \text{ ft.} = 16,200 \text{ square feet}$
 $16,200 \times \$1.25 = \$20,250 - \text{Queen's offer}$
 $\$22,500 - \$20,250 = \$2,250$
8. $4 \times \$125 = \500 1st floor
 $4 \times \$120 = \480 second floor
 $4 \times \$110 = \440 third floor
 $\$1,420$
 $\$1,420 \times 12 \text{ mo.} = \$17,040 \text{ annual rent}$
 $\$17,040 - \$2,800 = \$14,240 \text{ net rental}$
 $\$14,240 \div 8\% = \$178,000$
9. $\$1,500.00$
 .055
 $\$ 82.50$
 $\$82.50 \div 365 = .226$
 $\$25 \text{ divided by}$
 $.226 = 110 \text{ days}$
 $110 \text{ days} = 3$
 months, 20 days
10. The tract contains 10 acres
 $10 \times \$225 = \$2,250.00 \text{ is the selling price}$

- 5% of \$2,250.00 = \$112.50, broker's commission
 10% of \$112.50 = \$11.25
 \$112.50 - \$11.25 = \$101.25, broker's net
11. $\$1200 - \$1000 = \$200$
 $\$1,000 \times .10 = \100
 $\$200 - \$100 = \$100$ better for lot
12. $348,480 \div 43,560$ sq. ft. (per acre) = 8 acres
 $8 \times \$800 = \$6,400$ (total price)
13. $\frac{1}{20}$ of \$11,000 = \$550, depreciation per year
 $\frac{550}{11,000}$ of 100% = 5%, depreciation per year
14. $\frac{1}{2} \times \frac{1}{4} \times \frac{1}{4} \times \frac{1}{4} = \frac{1}{128}$
 Section contains 640 acres
 $640 \text{ acres} \div 128 = 5 \text{ acres}$
15. $\$2,000 \div .08 = \$25,000$
16. $4 \times \$120 = \480 , interest for 1 year
 $\$480 \div \$8,000 = 6\%$
17. $\frac{.06}{12} = .005$
 $\$100 \div .005 = \$20,000$
18. (a) $8\% \times \frac{1}{4} \text{ yr.} = 2\%$
 $\$10,000 \times 2\% = \200
 (b) $7\% \times \frac{1}{3} \text{ yr.} = 2.33\%$
 $\$10,000 \times 2.33\% = \233.33 $\$233.33 - 200 = \33.33
19. (a) $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{4} = \frac{1}{16}$ 640 acres in a section
 $\frac{1}{16}$ of 640 acres = 40 acres
 (b) $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{4} = \frac{1}{16}$
 $\frac{1}{16}$ of 640 acres = 40 acres
20. $\frac{6}{5} \times \$300 = \360
 $\frac{5}{6} \times 360 = \300
 $\$360 - \$300 = \$60$ (a)
21. $12 \text{ mos.} \times \$425 = \$5,100$
 $\$5,100 : 8\% :: (x) \text{ dollars} : 100\%$
 $8 \times 100 = 800$
 $\$5,100$ divided by .08 = \$63,750
22. $95\% : \$15,751 :: 100\% : (x) \text{ dollars}$
 $\$15,751$ divided by 95% = \$16,580
23. A section is 640 acres
 $2\frac{1}{2} \times 640 = 1,600$ acres $\times \$50 = \$80,000$
 5% of \$80,000 = \$4,000
 40% of \$4,000 = \$1,600
24. $450 \text{ feet} \times 600 \text{ feet} = 270,000$ sq. ft.
 $270,000$ sq. ft. divided by $43,560$ sq. ft. = 6.19 plus acres
 $6.2 \times \$100 = \620
25. Alberts contributed \$12,000 of \$20,000, or $\frac{3}{5}$
 $\frac{3}{5}$ of \$12,000 = \$7,200, Alberts' profit
 Briggs contributed \$8,000 of \$20,000, or $\frac{2}{5}$
 $\frac{2}{5}$ of \$12,000 = \$4,800, Briggs' share
26. \$147,800, expenses, minus \$77,800 = \$70,000 needed
 $\frac{\$70,000}{\$4,540,000} = .01541$, the rate per dollar
 $.01541 \times \$1,000 = \15.41 tax rate
27. \$20,000 minus \$3,600 = \$16,400, F.H.A. mortgage
 $\$16,400$ divided by \$97.79 = 167.7 months (168)
 $168 \text{ mos.} \div 12 \text{ mos.} = 14 \text{ years}$
28. \$25,000 minus \$5,000 = \$20,000 (mortgage)

$$\$20,000 \times .06 \times \frac{1}{12} = \$100 \text{ interest for first month}$$

$$\underline{\$100} \text{ payment on principal}$$

$$\$200 \text{ payment for first month}$$

$$\$20,000 \text{ minus } \$100 = \$19,900 \text{ principal due at end of first month}$$

$$\$19,900 \times .06 \times \frac{1}{12} = \$99.50 \text{ interest for second month}$$

$$(a) \$100 \text{ plus } \$99.50, \text{ interest payments} = \$199.50$$

$$(b) \$19,900 \text{ minus } \$100 = \$19,800, \text{ balance due}$$

$$29. \quad 2.5\% \text{ of } \$92.46 = \$2.31$$

$$\$92.46 \text{ minus } \$2.31 = \$90.15$$

$$30. \quad \$6,700 \text{ minus } \$1,200 = \$5,500, \text{ due on mortgage}$$

$$\$5,500 \times 5\% = \$275$$

$$\$6,700 \times 2\% = \$134$$

$$\underline{\$227} \text{ (other expenses)}$$

$$\$636, \text{ total expenses}$$

$$12 \times \$60 = \$720, \text{ income}$$

$$\$720 \text{ minus } \$636 = \$84, \text{ net}$$

$$\frac{\$84}{\$1,200} \text{ of } 100\% = 7\%, \text{ net}$$

$$31. \quad 4\frac{1}{2}\% \text{ of } \$7,500 = \$337.50, \text{ income expected}$$

$$\text{Total expenses, } \$208.50$$

$$\$337.50 \text{ plus } \$208.50 = \$546.00 \text{ yearly rental}$$

$$\$546.00 \text{ divided by } 12 = \$45.50 \text{ monthly rental}$$

$$32. \quad 3 \text{ yds.} = 9 \text{ ft.}$$

$$\pi = 3.1416 \times 9 = 28.2744 \text{ ft. circumference}$$

$$28.2744 \times \$0.25 = \$7.07, \text{ cost}$$

$$33. \quad (a) \quad \text{monthly payment would be } \$15,600 \text{ divided by } 240$$

$$\text{payments, or } \$65.00$$

$$(b) \quad \text{loan interest is } 7\% \text{ of } \$10,000, \text{ or } \$700 \text{ per year. Interest}$$

$$\text{per month would be } \frac{1}{12} \text{ of } \$700 = \$58.33$$

$$\$65.00 \text{ minus } \$58.33 = \$6.67$$

$$34. \quad 4 \times \$125 \times 12 \text{ mos.} = \$6,000$$

Expense:	Mtge. interest	\$1,500
	Depreciation	700
	Expense	<u>1,825</u>
		\$4,025

$$\$6,000 \text{ minus } \$4,025 = \$1,975, \text{ net income}$$

$$\$1,975 \text{ divided by } \$45,000 = 4.38\%$$

$$35. \quad \$6,250 \times .05 = \$312.50$$

$$\$312.50 \text{ divided by } 2 = \$156.25$$

$$36. \quad \$195 \times 12 = \$2,340$$

$$\$2,340 \times 2.5 = \$5,850$$

$$37. \quad 2 \times \$210 = \$420 \text{ annual interest}$$

$$\$420 \text{ divided by } \$6,000 = .07 \text{ or } 7\%$$

$$38. \quad 4 \times 4\frac{1}{4}\% = 17\%, \text{ total depreciation}$$

$$100\% \text{ value minus } 17\% = 83\%, \text{ or present value}$$

$$\$8,725 \text{ divided by } 83\% (.83) = \$10,512.04$$

$$39. \quad 90\% \text{ of } \$24,000 = \$21,600, \text{ insured value}$$

$$.54 \text{ per } \$100 = \$0.0054 \text{ per } \$1$$

$$\$0.0054 \times \$21,600 = \$116.64, \text{ premium for 36 months}$$

$$\text{Apr. 1, 1972 to Sept. 1, 1974} = 29 \text{ months}$$

$$\frac{29}{36} \text{ of } \$116.64 = \$93.96, \text{ buyer owes for unexpired premium}$$

$$40. \quad \text{Biggs will receive } \frac{\$24,000}{\$40,000} \text{ or } \frac{6}{10} \text{ of } \$3,000, \text{ or } \$1,800$$

- Diggs will receive $\frac{\$16,000}{\$40,000}$ or $\frac{4}{10}$ of \$3,000, or \$1,200
41. Expenses of \$200,000 less revenue of \$85,000 = \$115,000, amount needed
 $\frac{\$115,000}{6,500,000} = .0176$, rate per dollar
 $.0176 \times \$1,000 = \17.69 per \$1,000
 42. 30% of \$30,000 = \$9,000
 $\$17.69 \times 9 = \159.21 tax for 1973
 43. 5% of \$159.21 = \$7.96
 44. 12 months \times \$250 = \$3,000, annual income
 $\$3,000 - \$900 = \$2,100$, net return
 $\$2,100$ divided by .07 = \$30,000
 45. Multiply π (3.1416) by the square of the radius
 $3.1416 \times 6 \text{ feet} \times 6 \text{ feet} = 113.0976$, or 113.10 square feet
 46. 250 feet plus 350 feet and 250 feet plus 350 feet = 1,200 feet, perimeter
 $1,200 \times .35 = \$420$
 47. 4 yards = 12 feet
 $12 \text{ feet} \times 3.1416 (\pi) = 37.6992$
 $37.70 \times .30 = \$11.31$
 48. The formula is:
 Percentage rate of income = $\frac{\text{annual net income}}{\text{cash investment}}$
 $\$6,750$ divided by \$90,000 = 7.5 per cent
 49. \$2,800 plus \$2,400 plus \$2,450 plus \$2,850 plus \$3,000 plus \$1,400 plus \$790 plus \$900 plus \$700 = \$17,290
 15% of \$17,290 = \$2,593.50
 $\$2,593.50$ plus \$17,290 = \$19,883.50, total cost
 50. \$750 = 100%, cost
 $\$750 : 100\% : \$450 : (x)\%$
 $100\% \times \$450$ divided by \$750 = 60% of cost received
 $100\% - 60\%$ received = 40% loss
 51. 12 months \times \$96 = \$1,152, interest per annum
 $\$1,152$ divided by 6% interest = \$19,200 (amount of loan)
 $\$19,200 : 80\% : (x) : 100\%$, or $\frac{19,200}{80\%} = \$24,000$ appraised valuation
 52. $12 \times \$500 = \$6,000$, annual return
 $\$6,000$ divided by \$72,000 = $8\frac{1}{3}\%$
 53. \$25,500 - \$5,500 = \$20,000, amount of mortgage
 $\$20,000$ divided by \$100 per month = 200 months
 200 divided by 12 months = $16\frac{2}{3}$ years or 16 years, 8 months
 54. 6% on \$20,000 mortgage is \$1,200
 $\frac{1}{12}$ of \$1200 = \$100, interest first month
 $\$20,000 - \$100 = \$19,900$, balance due at end of first month
 6% on \$19,900 = \$1,194
 $\frac{1}{12}$ of \$1,194 = \$99.50, interest second month
 (a) \$100 plus \$99.50 = \$199.50, interest paid
 (b) \$20,000 - \$200 = \$19,800, credit to Saxton
 55. 50 ft. \times 100 ft. \times \$.75 = \$3,750
 10% of \$3,750 = \$375
 $\$3,750 - \$375 = \$3,375$
 56. Using the simple proportion formula, 20% is to \$2,500 as 100% is to (x) dollars, or
 $\$2,500 \times 100\%$ divided by 20% = \$12,500
 57. $69' \times 142' = 9,798$ square feet

- \$2,645.46 divided by 9,798 = 27 cents
58. 14 lots - 2 lots = 12 lots for sale
 12×75 feet = 900 feet (total frontage)
 $\$33,750$ divided by 900 feet = $\$37.50$, price per front foot
59. $264 \text{ ft.} \times 660 \text{ ft.} = 174,240$ square feet
 $43,560 \text{ sq. ft.} = 1$ acre
 $174,240$ divided by $43,560 = 4$ acres
 $4 \times \$800 = \$3,200$
60. $\$350 = 5\%$
 $\$350 : 5\% :: (x) \text{ dollars} : 100\%$

$$\frac{\$350 \times 100\%}{5\%} = \$7,000$$
61. $80 \times \$75 = \$6,000$
62. $24 \times 36 = 864$ square feet
63. 30 days (April) - 17 days = 13 days
 $13 \text{ days} + 31 \text{ days (May)} + 25 \text{ days (June)} = 69$ days
64. 1 board foot = 12 square inches \times 1 inch (thickness)
 $2'' \times 4'' = 8$ square inches = $\frac{2}{3}$ of 12 square inches
 $\frac{2}{3} \times 12' = 8$ board feet in one piece of lumber
 $8 \text{ board feet} \times 48 = 384$ board feet
65. January 1 to March 15 = $2\frac{1}{2}$ months
 $2\frac{1}{2} \div 12 = \frac{5}{2} \times \frac{1}{12} = \frac{5}{24}$ of a year
66. $3\frac{1}{2} \div 12 = \frac{7}{2} \times \frac{1}{12} = \frac{7}{24}$ of a year
67. $.375 = \frac{375}{1000} = \frac{375 \div 25}{1000 \div 25} = \frac{15}{40} = \frac{15 \div 5}{40 \div 5} = \frac{3}{8}$
68. $.38\frac{1}{3} = 38\frac{1}{3} \div 100 = \frac{115}{3} \times \frac{1}{100} = \frac{115}{300} = \frac{23}{60}$
69. $\frac{1}{8} = 1 \div 8 = .125 = 12\frac{1}{2}\%$
70. $\frac{1}{6} = 1 \div 6 = .16\frac{2}{3} = 16\frac{2}{3}\%$
71. $\frac{1}{2} + \frac{3}{4} + \frac{1}{8} = \frac{4}{8} + \frac{6}{8} + \frac{1}{8} = \frac{11}{8}$ or $1\frac{3}{8}$
72. $1\frac{1}{4} - \frac{3}{8} = \frac{10}{8} - \frac{3}{8} = \frac{7}{8}$
73. $\frac{1}{2} + \frac{5}{8} + \frac{3}{16} = \frac{8}{16} + \frac{10}{16} + \frac{3}{16} = \frac{21}{16}$ or $1\frac{5}{16}$
74. $\frac{1}{2}$ of 20 = 10 acres $\frac{1}{4}$ of 10 = $2\frac{1}{2}$ acres $10 - 2\frac{1}{2} = 7\frac{1}{2}$ acres
75. $\frac{1}{2} \times \frac{1}{4} = \frac{1}{8}$
76. $\frac{1}{2} \div \frac{1}{4} = \frac{1}{2} \times \frac{4}{1} = \frac{4}{2} = 2$
77. $\frac{25}{365}$ Divide both numerator and denominator by 5 = $\frac{5}{73}$ of a year
78. $21 \div 30 = \frac{21}{30} = \frac{7}{10}$ or .7
79. $\frac{3}{5} = 3 \div 5 = .60$ or 60%
80. $87\frac{1}{2}\% = .87\frac{1}{2} = 87\frac{1}{2} \div 100 = \frac{175}{2} \times \frac{1}{100} = \frac{175}{200} = \frac{7}{8}$
81. 3 years = 36 months $\frac{6}{36} = \frac{1}{6}$ of 3 years
82. $\frac{2}{3} \times \frac{1}{2} = \frac{2}{6}$ or $\frac{1}{3}$
83. $\frac{2}{3} \div \frac{1}{2} = \frac{2}{3} \times \frac{2}{1} = \frac{4}{3}$, or $1\frac{1}{3}$
84. $\frac{1}{2} \div \frac{2}{3} = \frac{1}{2} \times \frac{3}{2} = \frac{3}{4}$
85. $\frac{2}{3} \times 12 = \frac{2 \times 12}{3} = \frac{24}{3} = 8$ months
86. $\frac{1}{5}$ of 365 = $365 \div 5 = 73$ days
87. $\frac{1}{6} \times 43,560 = 7,260 \text{ sq. ft.}$
88. $5,445 \div 43,560 = .125$ or $\frac{1}{8}$ acre
89. $\frac{1}{4} + \frac{3}{16} = \frac{4}{16} + \frac{3}{16} = \frac{7}{16}$ amount for children
 $1 - \frac{7}{16} = \frac{16}{16} - \frac{7}{16} = \frac{9}{16}$ balance
90. $26\frac{6}{12} + 19\frac{9}{12} + 8\frac{10}{12} + 44\frac{8}{12} = 97\frac{33}{12} = 99\frac{9}{12} = 99\frac{3}{4}$
91. $18\frac{1}{2} = \frac{37}{2}$
 $\frac{41}{6} = \frac{25}{6}$
 $\frac{37}{2} \div \frac{25}{6} = \frac{37}{2} \times \frac{6}{25} = \frac{111}{25} = 4\frac{11}{25}$
92. $5\frac{1}{4}\% = 5.25\%$

- $\$223.65 = 5.25\%$ of the amount
 $\$223.65 \div 5.25 = \$42.60 = 1\%$ of the amount
 The amount = 100%
 $\$42.60 \times 100 = \$4,260$ the amount
93. $.83\frac{1}{3} = 83\frac{1}{3} \div 100 = \frac{250}{3} \div 100 = \frac{250}{3} \times \frac{1}{100} = \frac{250}{300} = \frac{5}{6}$
 $.75 = \frac{75}{100} = \frac{3}{4}$
 $\frac{3}{4} \times \frac{5}{6} = \frac{5}{8}$
94. $7 \times 2\frac{1}{2}\% = 17\frac{1}{2}\%$ depreciation
 $100\% - 17\frac{1}{2}\% = 82\frac{1}{2}\%$ present value
 $\$8,085 \div 82.5 = \$98 = 1\%$ of original value 100% = value
 $\$98 \times 100 = \$9,800$ original value
95. $\$19,750 \times .06 = \$1,185$ total commission 12 $\frac{1}{2}\%$ = .125
 $\$1,185 \times .125 = \148.125 or \$148.13
96. $\$13,800 \div 12 = \$1,150$ mo. loan
 $\$71.30 \div \$1,150 = .062$ or 6.2% or 6 $\frac{1}{5}\%$
97. $\$9,000 + 7\%$ commission = selling price
 $\$9,000 = 93\%$ of selling price
 $\$9,000 \div 93 = \96.7742
 $\$96.7742 \times 100 = \$9,677.42$
98. 7% on the listed price, commission would have been 7% of \$30,000 or \$2,100.
 10% off the listed price, or \$30,000 - \$3,000 = \$27,000 actual sales price.
 7% commission on \$27,000 = \$1,890 commission received.
 $\$2,100$ less \$1,890 = \$210 less in commission.
99. The average width of lot 60 ft. and 80 ft. is 70 feet
 70 ft. \times 150 ft. depth = 10,500 sq. ft.
 $\$13,125$ divided by 10,500 sq. ft. = \$1.25 per sq. ft.
100. $20 \times 17 = 340$ sq. ft.
 $340 \times 9\frac{1}{2} = 3,230$ cu. ft.
101. $40' \times 80' = 3200$ sq. ft.
 $40' \times 20' \times \frac{1}{2} = 400$ sq. ft.
 $3200 + 400$ sq. ft. = 3600 sq. ft.
102. 640 acres constitute a section
 N.W. $\frac{1}{4}$ of N.W. $\frac{1}{4} = 40$ acres
 N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4} = 20$ acres
 40 acres + 20 acres = 60 acres
103. 30 ft. \times 40 feet = 1,200 sq. ft.
 $1,200 \times \$15.00 = \$18,000.00$
 $3\% \times 3$ yr. = 9%
 9% of \$18,000 = \$1,620 depreciation
 $\$18,000 - \$1,620 = \$16,380$
104. 12 mos. $\times 100 = \$1,200$ gross income
 $\$1,200 - \360 expenses = \$840 net income
 $\frac{1}{12}$ of \$840 = \$70 monthly income
105. 50% of \$22,000 = \$11,000 taxable
 $.062 \times \$11,000 = \682
106. $2640 \times 5280 = 13,939,200$ square feet
 $5280 - 2640 = 2640$ feet; $13,939,200 \div 2 = 6,969,600$
 $13,939,200 + 6,969,600 = 20,908,800$ square feet
 $20,908,800 \div 43,560 = 480$ acres
107. a. $\$9,500 \div 1,000 = 9.5$
 $9.5 \times \$9.50 = \90.25
 b. $\$291 \div 12 = \24.25
 c. $\$9,500 \div 100 = 95$
 $95 \times \$98 = \93.10
 $\$93.10 \div 36 = \2.59

- d. $\$90.25 + \$24.25 + \$2.59 = \117.09
108. $500 \times 760 = 380,000$ square feet
 $380,000 \div 2 = 190,000$ square feet in lot
 $190,000 \div 43,560 = 4.36$ acres
109. $\$24 \times 12 = \288 expenses
 $\$3,600 + \$288 = \$3,888$ gross earning
 $\$3,888 = 6\%$ return
 $\$3,888 \div 6 = \648
 $\$648 \times 100 = \$64,800$
110. $\$18,915 \div 2.5 = \$7,566$ year's income
 $\$7,566 \div 52 = \145.50 week's income
111. $1320' \times 1980' = 2,613,600$ sq. ft. $16^2/3\% = 1/6$
 $43,560$ sq. ft. = 1 acre
 $2,613,600 \div 43,560 = 60$ acres
 $1/6$ of 60 = 10 acres
 $60 - 10 = 50$ acres
 $50 \times 3 = 150$ lots
112. $\$9,265 = 85\%$ of original listing
 $100\% = 100/85 \times \$9,265$, or $\$10,900$
 Alternate, by simple proportion:
 $\$9,265 : 85\% :: (x) : 100\%$
 $9,265 \times 100 = 926,500$
 $926,500$ divided by 85 = $\$10,900$
113. $75 \times \$24 = \$1,800$ assessment—front
 $\$1,800 \times 4.8 = \$8,640$ assessment on house
 $\$10,440 \times \$0.068 = \$709.92$ annual taxes
114. $1/4 + 3/5 = 5/20 + 12/20 = 17/20$ not usable or under cultivation
 $1 - 17/20 = 20/20 - 17/20 = 3/20 = 60$ acres meadow land
 $60 \div 3 = 20$ acres in $1/20$ of land
 $20 \times 20 = 400$ acres total farm
115. Contractor A $18' \times 27' \times 9' = 4,374$ cu. ft. in house
 (a) $4,374 \times \$0.29 = \$1,268.46$, bid of contractor A
 Contractor B $18' \times 27' = 486$ sq. ft. floor area
 $486 \times \$1.95 = \947.70
 $18' \times 27' \times 1/2 = 243$ cu. ft. concrete floor
 27 cu. ft. = 1 cu. yd.
 $243 \div 27 = 9$ cu. yd. concrete needed
 $9 \times \$17.50 = \157.50 , cost of concrete floor
 (b) $\$947.70 + \$157.50 = \$1,105.20$, bid of contractor B
 (c) Contractor B
 (d) $\$1,268.46 - \$1,105.20 = \$163.26$
116. $125 \times 160 = 20,000$ sq. ft.
 $20,000 \times \$0.17 = \$3,400$ property cost
 $\$2.25 \times 125 = \281.25 paving cost
 $\$3,400 + \$281.25 + \$295 = \$3,976.25$
117. $\$325 \times 52 = \$16,900$ yearly gross income
 $\$845 \times 12 = \$10,140$ yearly expense
 $\$16,900 - \$10,140 = \$6,760$
 $\$6,760 \div \$84,500 = .08$ or 8%
118. $6 1/2\% \times \$4,000 = \260
 $3 \times \$260 = \780
 $\$260 \div 12 = \21.67
 $5 \times \$21.67 = \108.35
 $20/30 \times \$21.67 = \14.45
 $\$780 + \$108.35 + \$14.45 = \902.80

119. $5\% \times \$23,000 = \$1,150$
 $90\% \div 2 = 45\%$ of commission for salesman
 $45\% \times \$1,150 = \517.50
120. $190 \times \$175.50 = \$33,345$ sale price
 $\$5,000 + \$18,300 + \$183 = \$23,483$
 $\$33,345 - \$23,483 = \$9,862$ balance
 $\$9,862 - \$3,972.07 = \$5,889.93$ cash needed
121. $26 \times 38 = 988$ square feet
 $988 \times 14 = 13,832$ cubic feet
122. $40 \times 28 = 1,120$ square feet
 $1,120 \times \$11.25 = \$12,600$
123. $\$75 + \$60 = \$135$
 $\$135 \div 2 = \67.50
 $60 \times \$67.50 = \$4,050$
124. $\$8250 = 95\%$ of selling price
 $\$8250 \div 95 = \$86.8421 = 1\%$ of selling price
 $\$86.8421 \times 100 = \$8,684.21$ selling price
125. $\$93.75 \times 4 = \375 paid each year
 $\$375 \div 5000 = .075$ or $7\frac{1}{2}\%$
126. $\$8000 \div 100 = 80$ per \$100
 $\$80 \times 2.27 = \181.60 per year
 $\frac{1}{2}$ of $\$181.60 = \90.80 taxes for 6 months
127. $132' \times 330' = 43,560$ sq. ft. = 1 acre, \$800
128. $\$8000 \times .60 = \4800
 $\$4800 + \$500 = \$5300$
 $\$8000 - \$5300 = \$2700$
129. $\$23,000 - \$11,000 = \$12,000$ gain
 $\$12,000 \div 120,000 = .10$ or 10%
130. $\$4800 \div \$60,000 = .08$ or 8%
131. $\$57.50 \div 5 = \11.50 or 1% of the sum
 $\$11.50 \times 100 = \$1,150.00$
132. $\$8,750 \div 75 = \116.67 per front foot
 $75' \times 110' = 8,250$ sq. ft.
 $\$8,750 \div 8,250 = \1.06 per sq. ft.
133. $75' \times 120' = 9,000$ sq. ft.
 $9,000 \times \$0.20 = \$1,800$ property
 $\$590$ broker's commission
 $75'$ frontage $75' \times \$5.50 = \412.50 sewers and paving
 $\$1,800 + \$412.50 = \$2,212.50$ total
 $\$2,212.50 \times .10 = \221.25 expected profit
 $\$2,212.50 + \$221.25 + \$590 = \$3,023.75$
134. $34' \times 28' \times 30' = 28,560$ cu. ft.
 $\$8,568 \div 28,560 = \0.30 cost per cu. ft.
135. 3 lots of \$3,000 each = \$9,000 $\$1,000 \div \$8,000 = \frac{1}{8}$ or $12\frac{1}{2}\%$
2 lots at \$4,000 each = 8,000
profit = \$1,000
136. $\$8,500 \div 8 = \$1,062.50 = 1\%$ of investment
 $\$1,062.50 \times 100 = \$106,250$ investment
137. $25' \times 30' \times 5' = 3,750$ cu. ft. 27 cu. ft. = 1 cu. yd.
 $3,750 \div 27 = 138.89$ cu. yd.
 $138.89 \times \$2.90 = \402.78
138. $495' \times 1,320' = 653,400$ sq. ft. $43,560$ sq. ft. = 1 acre
 $653,400 \div 43,560 = 15$ acres
 $15 \times \$200 = \$3,000$ total price
139. 3 lots @ \$2,400 = \$7,200 $\$1,200 \div \$6,000 = .20$ or 20%

$$2 \text{ lots @ } \$3,000 = \underline{6,000}$$

$$\text{profit} = \$1,200$$

140. $130' \times 30' = 3,900 \text{ sq. ft.}$ $130' \times 30' \times 24' = 93,600 \text{ cu. ft.}$
 $3,900 \times \$8.90 = \$34,710 \text{ cost by sq. ft.}$
 $93,600 \times \$3.71\frac{1}{2} = \$35,100 \text{ cost by cu. ft.}$
 $\$35,100 - \$34,710 = \$390 \text{ saved by giving contract to Dusch}$
141. $\$6,000 - \$1,200 = \$4,800, \text{ balance due}$
 $12 \times \$50 = \$600 \text{ paid each year}$
 $\$4,800 \div \$600 = 8 \text{ years}$
 First payment February 1, 1974
 Last payment January 1, 1982
142. $S\frac{1}{2} \text{ of NE}\frac{1}{4} \text{ of Sec. 27, T-8-N, R-14-E of 6th P.M.} = \frac{1}{8} \text{ of the}$
 $\text{Sec. } \frac{1}{8} \text{ of } 640 = 80 \text{ acres.}$
 $80 \times \$207.50 = \$16,600$
 $\$16,600 \times .05 = \830 commission
 $\frac{1}{2} \text{ of } \$830 = \$415, \text{ Jones' half of the commission}$
 $\$415 \times .075 = \$31.13, \text{ Lawrence's commission}$
 $\$415 - \$31.13 = \$383.87, \text{ net amount Jones receives}$
143. $\$9,000 \times .06 \times \frac{1}{12} = \$45 \text{ interest 1st month}$
 $\underline{45.00}$
 $\$9,045.00 \text{ due}$
 $\underline{125.00} \text{ paid 1st month}$
 $\$8,920.00 \text{ balance} \times .06 \times \frac{1}{12} = \$44.60 \text{ interest 2nd month}$
 $\underline{44.60} \text{ interest}$
 $\$8,964.60 \text{ due}$
 $\underline{124.60} \text{ 2nd month}$
 $\$8,840.00 \text{ balance} \times .06 \times \frac{1}{12} = \$44.20 \text{ interest 3rd month}$
 $\underline{44.20} \text{ interest}$
 $\$8,884.20 \text{ due}$
 $\underline{124.20} \text{ paid 3rd month}$
 $\$8,760.00 \text{ balance} \times .06 \times \frac{1}{12} = \$43.80 \text{ interest 4th month}$
 $\underline{43.80} \text{ interest}$
 $\$8,803.80 \text{ due}$
 $\underline{123.80} \text{ paid}$
 $\$8,680.00 \text{ balance} \times .06 \times \frac{1}{12} = \43.40
 $\$80.00 + \$43.40 = \$123.40 \text{ fifth payment}$
144. $43,560' \times 10' = 435,600 \text{ sq. ft. in 10 acres}$
 $435,600 - 85,600 = 350,000 \text{ sq. ft. to be subdivided}$
 $50' \times 100' = 5,000 \text{ sq. ft. in each lot}$
 $350,000 \div 5,000 = 70 \text{ lots}$
145. $46' \times 80' \times 16' = 58,880 \text{ cu. ft. first floor}$
 $58,880 \times \$80 = \$47,104 \text{ cost of 1st floor}$
 $46' \times 80' \times 14' = 51,520 \text{ cu. ft. 2nd floor}$
 $51,520 \times \$60 = \$30,912 \text{ cost of 2nd floor}$
 $\$47,104 + \$30,912 = \$78,016 \text{ total cost}$
146. $\$3,000 \div 60 = \$50 \text{ or } 1\%$
 $100 \times \$50 = \$5,000, \text{ cost of other lot}$
147. $\$15,000 \times .97 = \$14,550 \text{ insured value on } \$15,000$
 $\$5,000 \times .90 = \$4,500 \text{ insured value on next } \$5,000$
 $\$24,750 - \$20,000 = \$4,750 \text{ to be insured at } 75\% \text{ of value}$
 $\$4,750 \times .75 = \$3,562.50 \text{ insured value on balance}$
 $\$14,550 + \$4,500 + \$3,562.50 = \$22,612.50, \text{ insurable if occupied}$
 $\$22,612.50 \times .85 = \$19,220.63, \text{ insurable if not occupied}$

- $\$19,220.63 \times .04 = \768.83 discount collected on closing the loan
 148. $12 \times \$400 = \$4,800$ rental
 $\$120,000 - \$80,000 = \$40,000$, balance @ 5%
 $\$40,000 \times .05 = \$2,000$
 $\$4,800 + \$2,000 = \$6,800$, rent for the year
 149. $\frac{1}{4} + \frac{3}{16} = \frac{7}{16}$ unusable
 $1 - \frac{7}{16} = \frac{9}{16}$ usable
 $\frac{1}{8} \times \frac{9}{16} = \frac{9}{128}$ for roads
 $\frac{9}{16} - \frac{9}{128} = \frac{63}{128}$ usable balance
 $\frac{63}{128} \times 6,400 = 3,150$ sq. ft. usable
 150. $330' \times 100' = 33,000$ sq. ft. ($43,560$ sq. ft. = 1 acre)
 $33,000 \div 43,560 = .75$ or $\frac{3}{4}$ acre
 151. $92 \times \$95 = \$8,740$ in older district
 $112 \times \$95 = \$10,640$ in newer district
 152. b. $\$125 - \$110 = \$15$
 $\$15 \times 12 = \180 yearly loss
 $\$180 \div .06 = \$3,000$ loss in value
 153. $\$150 \times 12 = \$1,800$ yearly income
 $\$396 + \$66 + \$123 = \585 yearly expense
 $\$1,800 - \$585 = \$1,215$ profit
 $\$1,215 \div \$13,500 = .09$ or 9%
 154. $\$8,925.25 + \$1,510.60 + \$4,920.05 + \$3,644.10 = \$19,000.00$ total expense
 $\$53,200 - \$19,000 = \$34,200$
 155. $\$11,389 = 115\%$; $\$11,389 \div 115 = \99.03 ; $\$99.03 \times 100 = \$9,903$ original price
 $\$9,903 \times .45 = \$4,456.35$; $\$4,456.35 \times .048 = \213.90 taxes;
 $\$213.90 \times 3 = \641.70 ; $.035 \times \$9,903 = \346.61 yearly interest loss;
 $3 \times \$346.61 = \$1,039.83$; $\$11,389 - \$9,903 = \$1,486$
 $\$1,039.83 + \$641.70 = \$1,681.53$; $\$1,681.53 - \$1,486 = \$195.53$ loss
 156. $\$63 \times 50 = \$3,150$ lot price
 $\$3,150 + \$9,216 = \$12,366$ total cost
 $\$12,366 - \$5,000 = \$7,366$
 $.055 \times \$7,366 = \405.13 annual interest payment
 $\$405.13 \div 2 = \$202.56\frac{1}{2}$ round off to $\$202.57$
 157. $100 + 360 = 460$ foot lot perimeter
 $2 \times 3\frac{1}{2} = 7$ feet for gates
 $460 - 7 = 453$ feet
 $\$.80 \times 453 = \362.40
 $2 \times \$16.75 = \33.50 ; $\$33.50 + \$362.40 = \$395.90$
 158. $8 \times 36 = 288$ square feet
 $\$.20 \times 288 = \57.60 labor cost
 $36 \text{ ft.} \times 8 \text{ ft.} \times \frac{1}{4} \text{ ft.} = 72 \text{ cu. ft.}$
 $72 \text{ cu. ft.} \div 27 = 2.666 \text{ cu. yds.}$
 $2.666 \text{ cu. yds.} \times \$13.50 = \$35.99$
 $\$35.99 + \$57.60 = \$93.59$
 159. 30 days (April) - 17 days = 13 days
 13 days + 31 days (May) + 25 days (June) = 69 days
 160. $\$4,901.25 - \$2,015.07 = \$2,886.18$, Davis' equity
 $\$17,350 - \$2,886.18 = \$14,463.82$, Davis' encumbrance
 $\$14,250 - \$4,901.25 = \$9,348.75$, Underwood's encumbrance
 161. ($3' = 1 \text{ yd.}$)
 $36' = 12 \text{ yd.}$ $9' = 3 \text{ yd.}$ $18'' = 1\frac{1}{2}' = \frac{1}{2} \text{ yd.}$
 $12 \times 3 \times \frac{1}{2} = 18 \text{ cu. yd.}$
 162. $\$351.00$, interest on loan $12 \times \$125 = \$1,500$, year's
 $\$40.20$, interest lost on $\$2,000$ rental
 $\$146.40$, taxes (b) $\$1,500 - \$903.10 = \$596.90$

\$ 22.50, fire insurance
 \$147.00, upkeep
\$196.00, depreciation

$$- \$40.20 = \$556.70$$

\$903.10, cost first year (a)

163. (a) $\frac{1}{100}$ of \$9,000 = \$90, front foot value

(b) one acre contains 43,560 sq. ft.; $\frac{1}{2}$ acre is 21,780 sq. ft.;

$$\$9,000 \div 21,780 \text{ sq. ft.} = 41 \text{ cents value per sq. ft.}$$

(c) $2 \times \$9,000 = \$18,000$, value of one acre

(d) $21,780 \text{ sq. ft.} \div 100 \text{ ft.} = 217.8 \text{ ft. depth}$

164. $33' \times 48' = 1,584 \text{ sq. ft.}$

$$6' \times 20' = 120 \text{ sq. ft.}$$

$$1,584 + 120 = 1,704 \text{ total sq. ft.}$$

$$1,704 \text{ sq. ft.} \times \$12.50 = \$21,300, \text{ cost}$$

165. $12 \times \$58.45 = \701.40 , yearly payment $5\frac{1}{4}\% = .0525$

$$\$701.40 \div .0525 = \$13,360, \text{ amount of original loan}$$

166. $4\frac{1}{2} \times 43,560 = 196,020 \text{ sq. ft.}$ $196,020 - 71,020 = 125,000 \text{ sq. ft.}$

$$50' \times 100' = 5,000 \text{ sq. ft.}$$

$$125,000 \div 5,000 = 25 \text{ lots}$$

167. Monthly interest = balance $\times .06 \times \frac{1}{12}$

\$7,500.00, balance \$7,320.00, balance

37.50, interest 36.60, interest

\$7,537.50 \$7,356.60 total

97.50, 1st payment 96.60, 4th payment

\$7,440.00, balance \$7,260.00, balance

37.20, interest 36.30, interest

\$7,477.20, total \$7,296.30, total

97.20, 2nd payment 96.30, 5th payment

\$7,380.00, balance

36.90, interest

\$7,416.90, total

96.90, 3rd payment

168. $.97 \times \$13,500 = \$13,095$ $\$18,500 - \$13,500 = \$5,000$

$$.85 \times \$5,000 = \$4,250$$

\$17,345, insurable

169. $12 \times \$1,600 = \$19,200$, annual income

$$\$19,200 \times .45 = \$8,640, \text{ expense}$$

$$\$19,200 - \$8,640 = \$10,560, \text{ net income}$$

170. $\$6,000 \times .05 = \300 annual interest

$$\$300 \div 12 = \$25,$$

$$\$108 \div 12 = \$9, \text{ monthly taxes and ins.}$$

monthly int.

$$\$60 - \$34 = \$26, \text{ paid on principal}$$

$$\$25 + \$9 = \$34,$$

$$\$6,000 - \$26 = \$5,974, \text{ balance}$$

mo. expenses

171. $.015 \times \$600,000 = \$9,000$, $1\frac{1}{2}\%$ of gross sales

Must pay minimum of \$10,000, first year (a)

$$.015 \times 1,000,000 = \$15,000, \text{ rent the fourth year (b)}$$

172. $\$16,000 \times .72 = \$11,520$, 72% of value

$$\$11,520 \div 1,000 = 11.52, \$1,000 \text{ units to be insured}$$

$$11.52 \times \$3.10 = \$35.71, \text{ cost of insurance on dwelling}$$

$$\$5,600 \times .72 = \$4,032, 72\% \text{ of value}$$

$$\$4,032 \div 1,000 = \$4.032, \$1,000 \text{ units}$$

$$4.032 \times \$3.65 = \$14.72, \text{ insurance on furnishings}$$

$$\$35.71 + \$14.72 = \$50.43, \text{ insurance per year}$$

$$\$50.43 \times 3 = \$151.29, \text{ three year premium if paid yearly}$$

$$\$50.43 \times 2\frac{1}{2} = \$126.08, \text{ if premium paid once every three years}$$

$$\$151.29 - \$126.08 = \$25.21, \text{ saved}$$

173. $\$6,000 \times \frac{1}{2} = \$3,000$, half year
 $\$105 \div \$3,000 = .035$ or $3\frac{1}{2}\%$
174. $5\% = \$25$ $\$25 \div 5 = \5 or 1% of amount $100\% = \text{amount}$
 $100 \times \$5 = \500
175. There are 43,560 square feet in one acre
 $2\frac{1}{2} \times 43,560 \text{ sq. ft.} = 108,900 \text{ sq. ft.}$
176. $28 \times \$157.50 = \$4,410$ sale price of farm
 6% of $\$4,410 = \264.60 total commission
 60% of $\$264.60 = \158.76 salesperson's commission
177. $2 \times \$654.50 = \$1,309$ annual interest
 $\$1,309$ divided by $\$15,400 = 8\frac{1}{2}\%$ per cent
178. Sales price = Net Price + Commission
 $100\% - 6\% = 94\%$ net price
 $\$16,500$ divided by $.94 = \$17,553.19$ sales price
179. $\$3,600$ divided by $24 = \$150$ cost of one acre
 $87\frac{1}{2} \times \$150 = \$13,125$
180. 8% of $\$12,000 = \960 annual interest
 $\frac{1}{4}$ of $\$960 = \240 quarterly interest
181. Problem gives answer
182. $.05 \times \frac{1}{2} = .025$, rate for $\frac{1}{2}$ year
 $\$167.50 \div .025 = \$6,700$ or 65% of value
 $\$6,700 \div 65 = \103.0769 or 1% of value
 $100 \times \$103.0769 = \$10,307.69$, appraised value of property
183. $280 \times \$105 = \$29,400$, selling price of farm
 $\$15,000 \times .05 = \750 , commission on first $\$15,000$
 $\$29,400 - \$15,000 = \$14,400$, balance
 $\$10,000 \times .035 = \350 , commission on next $\$10,000$
 $\$14,400 - \$10,000 = \$4,400$, balance
 $\$4,400 \times .02 = \88 , commission on balance
 $\$750 + \$350 + \$88 = \$1,188$, total commission
 $\$1,188 \div 2 = \594 , 50-50 split commission
 $\$594 \times .10 = \59.40 , commission to be paid Stark
 $\$594 - \$59.40 = \$534.60$, Kane receives
184. Interest = Balance $\times .05 \times \frac{1}{12}$
- | | |
|------------------------------|------------------------------|
| $\$12,000$, Balance | $\$11,809.00$, total |
| <u>50</u> , interest | <u>169.00</u> , paid 3rd mo. |
| $\$12,050$, total | $\$11,640.00$, balance |
| <u>170</u> , paid 1st mo. | <u>48.50</u> , interest |
| $\$11,880$, balance | $\$11,688.50$, total |
| <u>49.50</u> , interest | <u>168.50</u> , 4th payment |
| $\$11,929.50$, total | $\$11,520.00$, balance |
| <u>169.50</u> , paid 2nd mo. | <u>48.00</u> , interest |
| $\$11,760.00$, balance | $\$11,568.00$, total |
| <u>49.00</u> , interest | <u>168.00</u> , paid 5th mo. |
185. $\$5,000 \times .05 = \250 , 5% commission
 $\$250 \times .10 = \25 , 10% commission of 5% commission
 $\$250 \div 2 = \125 , 50% commission
 $\$125 - \$25 = \$100$, second salesman received
186. $\$12,000,000 \div \$600,000 = 20$, ratio of assessed value over taxes
 $\$40,000 \div 20 = \$2,000$, taxes
187. $\frac{1}{2}$ of $\$85 = \42.50 , 1st mo.
 $17 \times .05 \times \$85 = \72.25 , next 17 mo.
 $\$42.50 + \$72.25 = \$114.75$, total commission
188. January 1 to September 15 = $8\frac{1}{2}$ months, $12 - 8\frac{1}{2} = 3\frac{1}{2}$ mo. refund

- $3\frac{1}{2} \div 12 = \frac{7}{24}$ of a year $\$126 \times \frac{7}{24} = \$36\frac{3}{4}$ or $\$36.75$, refund
189. $1 \times \$6,500 \times .05 = \325.00 , commission first year
 $4 \times \$6,500 \times .02 = \520.00 , commission next 4 years
 $10 \times \$6,500 \times .015 = \975.00 , commission next 10 years
 $5 \times \$6,500 \times .01 = \325.00 , commission next 5 years
 20 years commission $\$2,145.00$
190. $\$1,200 - \$1,000 = \$200$, profit on lot in one year
 $\$1,000 \times .10 = \100 , profit on loan in one year
 $\$100$, difference
191. $\$1,000 \times \frac{9}{12} \times .05 = \37.50 , interest for 9 months
 $\$1,000 + \$37.50 = \$1,037.50$, amount to be repaid
192. 6 months $= \frac{1}{2}$ year $\frac{1}{2}$ of 6% = 3% due in 6 months
 $100\% - 3\% = 97\%$ or $\$1,000$
 $\$1,000 \div 97 = \10.30926 or 1% of the money
 $\$10.30926 \times 100 = \$1,030.93$ or 100%, all the money needed
 to have $\$1,000$ cash immediately
193. Bal. $\$120.00 \times .03 = \3.60 , int. $\$23.40 \div \$120 = .195$ or $19\frac{1}{2}\%$
 Bal. $\$110.00 \times .03 = \3.30 , int.
 Bal. $\$100.00 \times .03 = \3.00 , int.
 Bal. $\$90.00 \times .03 = \2.70 , int.
 Bal. $\$80.00 \times .03 = \2.40 , int.
 Bal. $\$70.00 \times .03 = \2.10 , int.
 Bal. $\$60.00 \times .03 = \1.80 , int.
 Bal. $\$50.00 \times .03 = \1.50 , int.
 Bal. $\$40.00 \times .03 = \1.20 , int.
 Bal. $\$30.00 \times .03 = \0.90 , int.
 Bal. $\$20.00 \times .03 = \0.60 , int.
 Bal. $\$10.00 \times .03 = \0.30 , int.
 $\$23.40$, interest
194. 6 months $= \frac{1}{2}$ year $\frac{1}{2}$ of 6% = 3% interest due in 6 months
 $\$525 = 3\%$ of the amount invested
 $\$525 \div 3 = \175 or 1% of the amount
 $\$175 \times 100 = \$17,500$, or 100% of the total amount invested
195. $\$16,800 \times .05 = \840 , broker $\$16,800 - \$840 = \$15,960$, owner
196. $\$14,000 \div 1,000 = 14$, units of $\$1,000$ $14 \times \$21 = \294 , tax
197. $\$1,500 \times .055 = \82.50 , interest for one year
 $\$25.00 \div \$82.50 = .303$ of 365 days $= 111$ days. $111 \div 30 = 3$ mos. 21 days
198. $\$2,000,000 \times 5 = \$10,000,000$
 $\$550,000 \div \$10,000,000 = .055$ or $5\frac{1}{2}\%$
199. $\$10,000 - \$8,800 = \$1,200$, gross profit
 $\$1,200 - \$100 = \$1,100$, net profit
 $\$1,100 \div \$8,800 = .125$ or $12\frac{1}{2}\%$, profit
200. $12' \times 18' \times \frac{1}{3} = 72$ cu. ft. ($4'' = \frac{1}{3}$ ft.)
 $72 \div 27 = 2\frac{2}{3}$ cu. yd. (27 cu. ft. $= 1$ cu. yd.)
 $2\frac{2}{3} \times \$18.00 = \48.00 , paving costs
 $2\frac{2}{3} \times \$1.80 = 4.80$, labor costs
 $\$35.00$, barbecue pit
 $\$212.00$, furniture
 $\$299.80$, total costs
 $\$500 - 299.80 = \200.20 profit
201. $1320 \times 1320 = 1,742,400$ square feet
 $1,742,400 \div 2 = 871,200$
 $871,200 \div 43,560 = 20$ acres
202. $.0625 \times \$15,200 = \950 yearly interest

- $\$950 \div 24 = \39.58
 203. $\$3,600 - \$1,200 = \$2,400$; $.06 \times \$2,400 = \144
 $\$2,400 - \$600 = \$1,800$; $.06 \times \$1,800 = \108
 $\$1,800 - \$600 = \$1,200$; $.06 \times \$1,200 = \72
 $\$1,200 - \$600 = \$600$; $.06 \times \$600 = \36
 $\$144 + \$108 + \$72 + \$36 = \$360$
 204. $\$2,400 \times .06 = \144 yearly; $\$144 \div 2 = \72 (first six months)
 $\$2,400 - \$600 = \$1,800$; $\$1,800 \times .06 = \108
 $\$1,800 - \$600 = \$1,200$; $\$1,200 \times .06 = \72
 $\$1,200 - \$600 = \$600$; $\$600 \times .06 = \36 ; $\$72 + \$108 + \$72 + \$36 = \$288$
 205. $\$78,300 \div 9 = \$8,700$ per acre
 $100 \times 145.2 = 14,520$ square feet
 $14,520 \div 43,560 = .33$ or $\frac{1}{3}$ acre
 $\frac{1}{3} \times \$8,700 = \$2,900$
 206. $2\frac{1}{6} = \frac{13}{6}$
 $\$6,500 \div \frac{13}{6} = \$6,500 \times \frac{6}{13} = \$3,000$
 207. $25 \text{ w.} \times 24 \text{ hours} = 600 \text{ watt-hours}$
 $600 \text{ w-h} \times 16 = 9600 \text{ watt-hours}$
 $25 \text{ w} \times 12 \text{ hours} = 300 \text{ watt-hours}$
 $300 \text{ w-h} \times 2 = 600 \text{ watt-hours}$
 $9600 \text{ w-h} + 600 \text{ w-h} = 10,200 \text{ watt-hours}$
 $10,200 \text{ w-h} \div 1,000 \text{ w} = 10.2 \text{ kilowatt-hours}$
 $10.2 \text{ (kw-h)} \times 3.5¢ = 35.7¢$; $35.7¢ \times 30 \text{ (days in June)} = \10.71
 208. $108 \text{ yards} - 12 \text{ yards} = 96 \text{ yards}$
 $96 \text{ yards} \div 6 = 16 \text{ yards, width}$
 $16 \text{ yards} \times 2 = 32 \text{ yards}$; $32 \text{ yards} + 6 \text{ yards} = 38 \text{ yards, length}$
 209. $\$25,000 + \$1,500 + \$625 = \$27,125$, invested
 $\$30,000 - \$27,125 = \$2,875$, expected profit
 $\$2,875 \div \$27,125 = .106$ or 10.6% profit over investment
 210. Bal. $\$5,000 \times .06 \times \frac{1}{4} = \75.00 , int. 1st quarter
 Bal. $\$4,700 \times .06 \times \frac{1}{4} = \70.50 , int. 2nd quarter
 Bal. $\$4,400 \times .06 \times \frac{1}{4} = \66.00 , int. 3rd quarter
 Bal. $\$4,100 \times .06 \times \frac{1}{4} = \61.50 , int. 4th quarter
 $\$273.00$, total interest
 $4 \times \$300.00 = \$1,200.00$, total quarterly payments
 $\$1,473.00$, total payments 1st year
 211. $\$21,000 - \$1,000 = \$20,000$, balance after down payment
 $\$20,000 \times .05 = \$1,000$, interest at end of 1st year
 $\$20,000 + \$1,000 - \$7,000 = \$14,000$, balance after 1st payment
 $\$14,000 \times .05 = \700 , interest at end of 2nd year
 $\$14,000 + \$700 - \$7,000 = \$7,700$, balance after 2nd payment
 $\$7,700 \times .05 = \385 , interest at the end of the 3rd year
 $\$7,700 + \$385 - \$7,000 = \$1,085$, balance after last payment
 $\$1,085 - \$1,000 = \$85$, balance after deducting \$1,000 extra
 payment on payment plan
 $\$85.00$ saved by using the payment plan
 212. $\$12,500 - \$4,000 = \$8,500$, balance after down payment
 $\$8,500 \times .05 \times \frac{1}{2} = \212.50 , interest after 6 months
 $\$8,500 + \$212.50 = \$8,712.50$, balance with interest added
 $\$8,712.50 \times .05 \times \frac{1}{2} = \217.81 , interest at end of year
 $\$8,712.50 + \$217.81 = \$8,930.31$, balance with interest but
 not enough to meet the \$9,000 payment
 213. (a) (b) (c) $\$41,986$

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214. $\$5,800 \times .05 = \290 . $\$290 \times .60 = \174 , broker's share.
215. $\$8,500 \times .05 = \425.00 , 5% office commission
 $.10 \times \$425 = \underline{42.50}$, 10% commission to sales manager
 $\$382.50$, balance
 $\$382.50 \div 2 = \191.25 , commission due salesman
216. 9 months from April 15, 1971 to January 15, 1972 = $\frac{3}{4}$ year
 $\$1,700 \times .05 \times \frac{3}{4} = \63.75 , interest due
217. $6 \times .025 = .15$, depreciation in 6 years
 $100\% - 15\% = 85\%$, value then = $\$7,650$
 $\$7,650 \div 85 = \90 , or 1% of value
 $100 \times \$90 = \$9,000$, original value of house
218. $\$10,000 \times .05 = \500 , 5% of first $\$10,000$
 $\$730 - \$500 = \$230$, balance
 $\$230 \div .025 = \$9,200$, value of over $\$10,000$
 $\$10,000 + \$9,200 = \$19,200$, selling price of property
219. $\$5,800 - \$1,600 = \$4,200$ $\$4,200 \times .06 = \252 , interest
 $\$4,200 + \$252 = \$4,452$ $\$30$ on $\$4,200 +$ interest per mo.
 $\$4,200 \div 30 = 140$ mo. payments $140 \div 12 = 11$ yr. 8 mo.
Feb. 1, 1971, first payment + 11 yr. 8 mo. = Sept. 2, 1982
220. $\$6,000 \times .60 = \$3,600$, assessed value 55 mills = $\$.055$
 $\$3,600 \times .055 = \198 , taxes
221. $60' \times 120' = 7,200$ sq. ft. $7,200 \times \$10 = \720 , property cost
 $60' \times \$2.50 = \150 , paving $\$150 =$ profit
 $\$720 + \$150 + \$150 = \$1,020$, sales price
222. Problem gives answer
223. 50% of $\$30,000 = \$15,000$ assessment
 $22 + 30 + 12\frac{1}{2} = 64\frac{1}{2}$ mills
 $.0645 \times \$15,000 = \967.50
224. Problem gives answer
225. $\frac{2}{3}$ of $\$18,000 = \$12,000$ assessment
 $42\frac{1}{4}$ mills or $.04225 \times \$12,000 = \507
226. Problem gives answer
227. $250' \times 200' = 50,000$ sq. ft.
 $50,000 \times .60 = \$30,000$, paving costs
Curb & gutters 1,250
Lighting 5,000
Total cost $\underline{\$36,250}$
 $\$36,250$ divided by 250 = $\$145$ (a)
50,000 sq. ft. divided by 200 sq. ft. = 250 parking spaces (b)
228. $100\% - 5\% = 95\%$, Haines received.
 $\$31,150$ divided by $.95 = \$32,789.47$, selling price
229. $28' \times 40' = 1,120$ sq. ft.
 $1,120 \times \$15 = \$16,800$
 $3 \times 2\frac{1}{2}\% = 7\frac{1}{2}\%$ $.075 \times \$16,800 = \$1,260$ depreciation
 $\$16,800 - \$1,260 = \$15,540$ appraised value
230. 12 months $\times \$1,500 = \$18,000$ annual rent
5% of $\$18,000 = \900 vacancy allowance
 $\$900 + \$7,200 = \$8,100$ offset against income
 $\$18,000 - \$8,100 = \$9,900$ net income
 $\$9,900$ divided by 8% = $\$123,750$ amount of offer
231. 24 feet $\times 30$ feet $\times \$16 =$ $\$11,520$ living area
8 feet $\times 6$ feet $\times \$14 =$ $\$672$ breakfast area
 $\underline{\$12,192}$ cost when built

$$24 \text{ feet} \times 30 \text{ feet} = 720 \text{ square feet living room area}$$

$$8 \text{ feet} \times 6 \text{ feet} = 48 \text{ square feet breakfast area}$$

$$768 \text{ square feet total area}$$

$$\$12,192 \text{ divided by } 768 \text{ square feet} = \$15.875 \text{ per square foot}$$

$$24 \text{ feet} \times 30 \text{ feet} \times \$18 = \$12,960$$

$$8 \text{ feet} \times 6 \text{ feet} \times \$16 = \$768$$

$$\$13,728 \text{ current cost}$$

$$\$13,728 \text{ divided by } 768 \text{ square feet} = \$17.875 \text{ present cost per square foot}$$

$$\$17.875 - \$15.875 = \$2.00 \text{ increase per square foot}$$

$$(\text{or, more simply, } \$18 - \$16 = \$2.00, \text{ increase per sq. ft. living room}$$

$$\$16 - \$14 = \$2.00, \text{ increase per sq. ft., breakfast area}).$$

232. $80' \times 25' = 2,000 \text{ sq. ft.}$

$$15' \times 80' \times \frac{1}{2} = 600 \text{ sq. ft.}$$

$$\text{Total } 2600 \text{ sq. ft.}$$

233. $12 \times \$110 = \$1,320 \text{ monthly income}$

$$12 \text{ months} \times \$1,320 = \$15,840 \text{ annual income}$$

$$\$15,840 - \$3,625 = \$12,215$$

$$\$12,215 \text{ divided by } \$110,000 = 11.1 \text{ per cent}$$

234. $6\% \text{ of } \$8,000 = \$480 \text{ interest for one year}$

$$\$480 \text{ divided by } 365 \text{ days} = \$1.32 \text{ per day}$$

$$80 \times \$1.32 = \$105.60$$

235. $12 \times \$90 = \$1,080 \text{ interest for one year}$

$$\$1,080 \text{ divided by } 8\% = \$13,500 \text{ amount of loan}$$

236. $\frac{0.875}{8 \overline{)7.000}}$

$$\begin{array}{r} 8 \overline{)7.000} \\ \underline{64} \\ 60 \\ \underline{56} \\ 40 \\ \underline{40} \\ 0 \end{array}$$

237. $90 \times 90 = 8,100 \text{ square feet}$

$$\frac{1}{2} \text{ of } 8,100 \text{ sq. ft.} = 4,050 \text{ sq. ft.}$$

238. Dec. 1, 1977 to Mar. 1, 1978 = 3 mo. or $\frac{1}{4}$ yr.

$$\$20,000 \times .04 \times \frac{1}{4} = \$200, \text{ interest}$$

$$\$500 + \$200 = \$700 \text{ due on mortgage March 1, 1974}$$

239. Interest = balance $\times .06 \times \frac{1}{12}$

$$\$2,000, \text{ balance} \qquad \$1,924.87, \text{ balance}$$

$$10, \text{ interest} \qquad \underline{9.62}, \text{ interest}$$

$$\$2,010, \text{ total} \qquad \$1,934.49, \text{ total}$$

$$35 \text{ payment} \qquad \underline{45.00}, \text{ payment}$$

$$\$1,975.00, \text{ balance} \qquad \$1,889.49, \text{ balance}$$

$$9.87 \text{ interest} \qquad \underline{9.45} \text{ interest (Dec.)}$$

$$\$1,984.87, \text{ total} \qquad \text{(b)} \$1,898.94, \text{ balance}$$

$$60.00, \text{ payment (a) } \$10 + \$9.87 + \$9.62 = \$29.49, \text{ int. pd.}$$

240. $\$1,325.28 \div 2 = \662.64 paid

$$\$662.64 \div 12 = \$55.22, \frac{1}{2} \text{ month payment to be paid by buyer}$$

$$\$662.64 - \$55.22 = \$607.42, \text{ taxes charged seller}$$

241. $\$325 \div \$155 = \$170, \text{ net income per month}$

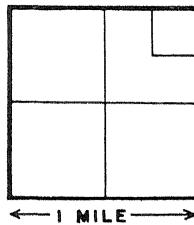
$$\$170 \times 12 = \$2,040, \text{ net income per year}$$

242. $250 \text{ ft.} \times 750 \text{ ft.} = 187,500 \text{ sq. ft.}$

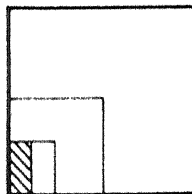
$$187,500 \text{ sq. ft. divided by } 43,560 \text{ sq. ft.} = 4.304 \text{ acres.}$$

$$4.304 @ \$950 = \$4,088.80.$$

243. $\$13,000 \times .18 = \$2,340$, down payment
 $\$13,000 - 2,340 = \$10,660$, amount to borrow
 $\$10,660 \times .015 = \159.90 , loan commission
 $\$2,340 + \$159.90 = \$2,499.90$, amount needed
244. $65 \text{ ft.} \times 150 \text{ ft.} = 9,750 \text{ sq. ft.}$
 $9,750 \times \$1.25 = \$12,187.50$
 $65 \text{ ft.} \times \$10 = \650 ; total price: $\$12,837.50$
245. $43,560 \text{ sq. ft.} \leftarrow 1 \text{ acre}$
 $326.7' \times 200' = 65,340 \text{ sq. ft.}$ $65,340 \div 43,560 = 1\frac{1}{2} \text{ acres}$
 $1\frac{1}{2} \times \$5,000 = \$7,500$, selling price.
246. $46' \times 80' \times 16' \times \$.80 = \$47,104$, cost of 1st floor
 $46' \times 80' \times 14' \times \$.60 = \$30,912$, cost of 2nd floor
 $\$78,016$, total cost
247. 1 mile = 5,280'
 $\frac{1}{4}$ of 5,280' = 1,320' on the south side of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of a section



248. $36' \times 9' \times \$.20 = \64.80 , labor cost per sq. ft.
 $4'' = \frac{1}{3} \text{ ft.}$ $36' \times 9' \times \frac{1}{3} = 108 \text{ cu. ft.}$ $27 \text{ cu. ft.} = 1 \text{ cu. yd.}$
 $108 \div 27 = 4 \text{ cu. yd.}$ $4 \times \$15 = \60 , cost of concrete
 $\$60 + \$64.80 = \$124.80$, total cost
249. $4 \times \$85 = \340 , rent income per month
 $.45 \times \$340 = \153 , profit
 $\$36,000 \div 12 = \$3,000$, investment per month
 $\$153 \div \$3,000 = .051$ or 5.1% return on investment
250. SW $\frac{1}{4} = 160 \text{ acres}$
SW $\frac{1}{4}$ of SW $\frac{1}{4} = 40 \text{ acres}$
W $\frac{1}{2}$ of 40 acres = 20 acres



251. $32' \times 24' \times 20' = 15,360 \text{ cu. ft.}$ (Because of gable use only
 $\frac{1}{2}$ of 8' height in attic: $8' + 8' + 4' = 20'$ total ht.)
252. $32' \times 24' = 768 \text{ sq. ft.}$
 $\$10,828.80 \div 768 = \14.10 , cost per sq. ft.
253. $50 \times \$44 = \2200 , assessed value of lot
 $\$6500$, assessed value of house
 $\$8700$, total assessment

- $\$8,700 \times \$0.48 = \$417.60$, year's taxes
 254. $50 \times \$65 =$ \$ 3,250, cost of lot
 \$10,828.80, cost of house
 \$14,078.80, total cost
 - \$ 6,500.00, cash payment
 \$ 7,578.80, balance
 $\$7,578.80 \times \frac{1}{2} \times .05 = \189.47 , first semi-annual interest payment
 255. $32' \times 24' \times 20' \times \$7.75 =$ \$11,904, bid A
 $32' \times 24' \times 3 \times \$4.70 =$ \$10,828.80, bid B
 Bid B cheaper by \$ 1,075.20
 256. $10 \times 2\% = 20\%$ depreciation in 10 years
 $\$10,828.80 \times .20 = \$2,165.76$, amount of depreciation
 $\$10,828.80 - \$2,165.76 = \$8,663.04$ value in 10 years
 $\$65 \times .22 = \14.30 , increase in value per front ft.
 $\$65 + \$14.30 = \$79.30$, cost per front ft. 10 years
 $\$79.30 \times 50 = \$3,965$, cost of lot in 10 years
 $\$3,965 + \$8,663.04 = \$12,628.04$, total value of property in 10 years
 257. $\$10,828.80 \times .05 = \541.44 , architect's charge
 $50 \times \$65 = \$3,250$, cost of lot
 $\$10,828.80 + \$3,250.00 + \$541.44 = \$14,620.24$, total investment
 $1 - \frac{3}{4} = \frac{1}{4}$ equity $\frac{1}{4}$ of \$14,620.24 = \$3,655.06, equity
 258. $\$21.75 \times 2 = \43.50 , cost of gates
 $180' - 4' = 176'$ linear measurement excluding gate
 $176' + 50' + 176' + 50' = 452'$ total linear ft.
 $452 \times \$0.85 = \384.20 , cost of fencing
 $\$384.20 + \$43.50 = \$427.70$, total cost of fencing and gates
 259. $36' \times 6' \times \$0.27 = \58.32 , labor costs $4'' = \frac{1}{3}$ ft.
 $36' \times 6' \times \frac{1}{3} = 72$ cu. ft. 27 cu. ft. = 1 cu. yd.
 $72 \div 27 = 2\frac{2}{3}$ cu. yd. $2\frac{2}{3} \times \$14.25 = \38.00 , cost of concrete
 $\$58.32 + \$38.00 = \$96.32$, total cost of driveway
 260. $12 \times \$155 = \$1,860$, income on property per year
 $\$402 + \$78 + \$260 = \740 , yearly expenses
 $\$1,860 - \$740 = \$1,120$, profit per year
 $\$1,120 \div \$14,000 = .08$ or 8% net return on investment
 261. From problem 257, $\frac{3}{4}$ of total cost = mortgage
 $\frac{3}{4}$ of \$14,620.24 = \$10,965.18, mortgage
 $\$10,965.18 \times .06 \times \frac{1}{12} = \54.83 , interest
 + 54.83, interest
\$11,020.01, balance plus interest
 - 75.00, payment
\$10,945.01, new balance $\$10,945.01 \times .06 \times \frac{1}{12} = \54.73
 + 54.73, interest
\$10,999.74, balance plus interest
 - 75.00, payment
\$10,924.74, balance after June payment
 262. $50 \times \$65 = \$3,250$, cost of original lot
 $\$7,300 - \$3,250 = \$4,050$, balance to be invested in land
 $\$4,050 \div \$1.50 = 2,700$ sq. ft. can be bought
 $2,700 \div 180 = 15'$ front ft. can be bought
 $15' + 50' = 65'$, frontage $180' \times 65' = 11,700$ sq. ft.
 263. $\$3,100 \times .55 = \$1,705$, taxable
 $\$1,705 \div 1,000 = 1.705$ units

- $1.705 \times \$42.25 \times 5 = \360.18 , taxes
 $\$3,100 \times .04 \times 5 = \620 , interest loss
 $\$3,100 + \$360.18 + \$620.00 = \$4,080.18$, total transaction
 $\$4,250.00 - \$4,080.18 = \$169.82$, profit
264. $1 \text{ acre} = 43,560 \text{ sq. ft.}$ $1\frac{1}{2} \text{ acre} = 65,340 \text{ sq. ft.}$
 $\frac{1}{4} \text{ of } 65,340 = 16,335 \text{ sq. ft. too steep}$
 $\frac{1}{3} \text{ of } 65,340 = 21,780 \text{ sq. ft. in stream}$
 $38,115 \text{ sq. ft. not usable}$
 $65,340 - 38,115 = 27,225 \text{ sq. ft. usable}$
 $\frac{1}{6} \text{ of } 27,225 = 4,537.5 \text{ sq. ft. for roads}$
 $27,225 - 4,537.5 = 22,687.5 \text{ sq. ft. for building}$
265. $100\% - 15\% = 85\%$, selling price
 $\$17,000 \times .85 = \$14,450$, selling price
 $\$14,450 \times .06 = \867.00 commission
 $\frac{1}{2} \text{ of } \$867 = \$433.50$, Mr. Duncan's 50% commission
 $\$433.50 \times .20 = \86.70 , Mr. Rayer's commission
 $\$433.50 - \$86.70 = \$346.80$, net amount Mr. Duncan received on sale
266. $4 \times 100 = \$400$ annual payment
 $\$400 \text{ divided by } \$8,000 = .05 \text{ or } 5\%$
267. $\$50,000 \times .15 = \$7,500$ down payment
 $\$50,000 - \$7,500 = \$42,500$ balance
 $\$42,500 \div \$1,000 = 42.5$ units of \$1,000
 $42.5 \times \$7.50 = \318.75 monthly payments
268. $\$3,000 = 5\%$ of value
 $\$3,000 \div 5 = \600 or 1% of value
 $100 \times \$600 = \$60,000$ capitalized value of property
269. $69' \times 142' = 9,798 \text{ sq. ft.}$
 $\$2,645.46 \div 9,798 = \2.7 per sq. ft.
270. $50' \times 100' = 5,000 \text{ sq. ft.}$ $5,000 \times \$0.75 = \$3,750$, selling price
 $\$3,750 \times .05 = \187.50 , sales commission
 $\$3,750 - \$187.50 = \$3,562.50$, seller receives
271. $4 \times \$57.55 = \230.20 , annual interest payment
 $\$230.20 \div \$4,200 = .0548$ or about $5\frac{1}{2}\%$ interest rate
272. $60 \times \$150 = \$9,000$ list price $\$7,650 \times .10 = \765 sales commission
 $\$7,650 + \$765 = \$8,415$, selling price
 $\$9,000 - \$8,415 = \$585$ buyer saved
273. $\frac{1}{12} \text{ of } \$300 = \$25$, tax for one month
 March 15, 1974 to December 31, 1974 = $9\frac{1}{2}$ mos.
 $9\frac{1}{2} \times \$25 = \237.50
274. $12 \times \$300 = \$3,600$ yearly rental
 $\$120,000 - \$80,000 = \$40,000$ amount over \$80,000
 $\$40,000 \times .05 = \$2,000$, 5% over gross of \$80,000
 $\$3,600 + \$2,000 = \$5,600$, Brown received yearly
275. $\$7,095 \div 86 = \82.50 per front ft. $86' \times 110' = 9,460 \text{ sq. ft.}$
 $\$7,095 \div 9,460 = \0.75 per sq. ft.
276. $1,600 \times \$11 = \$17,600$, cost of house
 $20' \times 30' = 600 \text{ sq. ft.}$ $600 \times \$4 = \$2,400$, cost of garage
 $50' \times 15' = \$750$, cost of lot
 $\$17,600 + \$2,400 + \$750 = \$20,750$, total cost
277. $33'6'' = 33\frac{1}{2}'$ $45'6'' = 45\frac{1}{2}'$ $33\frac{1}{2}' \times 45\frac{1}{2}' = 1,524.25 \text{ sq. ft.}$
 $15' \times 5' = 75 \text{ sq. ft. for family room}$
 $1,524.25 + 75 = 1,599.25$ total sq. ft.
 $1,599.25 \times \$12.85 = \$20,550.36$, total cost of building house
278. $3,250 \text{ sq. ft.} \times \$0.14 = \$455.00$
 $2,000 \text{ sq. ft.} \times \$0.085 = \$170.00$

- $7,250 \text{ sq. ft.} \times \$1 = \$7,250.00$
 $\$455 + \$170 + \$7,250 = \$7,875 \text{ total price}$
 $3,250 \text{ sq. ft.} + 2,000 \text{ sq. ft.} + 7,250 \text{ sq. ft.} = 12,500 \text{ sq. ft. area}$
 $\$7,875 \div 12,500 = \0.63 per sq. ft.
279. $.05 \times \$10,000 = \$500 \text{ commission on the first } \$10,000$
 $\$730 - \$500 = \$230 = \text{the } 2\frac{1}{2} \text{ percent commission on the excess}$
 $\$230 \div 2.5 = \92
 $\$92 \times 100 = \$9,200 \text{ excess}$
 $\$10,000 + \$9,200 = \$19,200$
280. $30' \times 30' = 900 \text{ sq. ft. area of square}$
 $3.14 \times \text{radius}^2 = \text{area of circle}$
 $27' \div 2 = 13.5' \text{ radius}$
 $3.14 \times 13.5' \times 13.5' = 572.265 \text{ sq. ft. area of circle}$
 $900 \text{ sq. ft.} - 572.265 \text{ sq. ft.} = 327.735 \text{ sq. ft.}$
281. $40' \times 24' \times 15' = 14,400 \text{ cu. ft.}$
 $14,400 \div 200 = 72 \text{ persons}$
282. a. $20' \times 15' \times 9' = 2,700 \text{ cu. ft.}$
 $27 \text{ cu. ft.} = 1 \text{ cu. yd.}$
 $2,700 \text{ cu. ft.} \div 27 \text{ cu. ft.} = 100 \text{ cu. yds.}$
 b. $100 \times \$3.40 = \340
283. $45' \times 25' \times 8' = 9,000 \text{ cu. ft.}$
 $27 \text{ cu. ft.} = 1 \text{ cu. yd.}$
 $9,000 \text{ cu. ft.} \div 27 \text{ cu. ft.} = 333\frac{1}{3} \text{ cu. yds.}$
 $333\frac{1}{3} \text{ cu. yds.} \div 4 \text{ cu. yds.} = 83\frac{1}{3} \text{ or } 84 \text{ truck-loads}$
284. $60' \times \$9.00 = \540
 $59 + 58 + 57 \dots + 4 + 3 + 2 + 1 = 1770$
 $\$1.25 \times 1770 = \$2,212.50$
 $\$540 + \$2,212.50 = \$2,752.50$
285. $15' \times 24' = 360 \text{ sq. ft.}$
 $9 \text{ sq. ft.} = 1 \text{ sq. yd.}$
 $360 \text{ sq. ft.} \div 9 \text{ sq. ft.} = 40 \text{ sq. yds.}$
 $40 \times \$14.95 = \598
286. $8 \times 2 \text{ yds.} = 16 \text{ yds.}$
 $16 \times \$3.90 = \62.40
287. $240 \times \$60 = \$14,400, \text{ B's allowance}$
 $\$23,500 - \$14,400 = \$9,100 \text{ B owes A}$
288. $\$16,000 - \$13,600 = \$2,400, \text{ profit}$
 $\$2,400 \text{ divided by } \$13,600 = 17.6\%$
289. $\$23,000 - \$11,000 = \$12,000, \text{ net income}$
 $\$12,000 \div \$120,000 = .10 \text{ or } 10\% \text{ return on investment}$
290. $\$400 \text{ divided by } 40 \text{ mills} = \$10,000 \text{ assessed value}$
 $\$10,000 : 50\% :: (X) : 100\%$
 $\$10,000 \times 100 \text{ divided by } 50 = \$20,000$
291. $\$140 \times 12 = \$1,680, \text{ annual income}$
 $\$1,680 \div \$21,000 = .08 \text{ or } 8\% \text{ return on investment}$
292. $\$6,000 \times .05 \times \frac{1}{12} = \$25.00, \text{ interest 1st month}$
 $\$6,000 + \$25.00 = \$6,025$
 $\$6,025 - \$60 = \$5,965, \text{ balance (plus insurance and taxes)}$
293. $\$10,000 - \$1,500 = \$8,500, \text{ amount of fire insurance on house}$
294. No stamps are necessary.
295. $\$140,000 - \$80,000 = \$60,000, \text{ gross over } \$80,000$
 $\$60,000 \times .05 = \$3,000, 5\% \text{ on gross over } \$80,000$
 $12 \times \$300 = \$3,600, \text{ minimum monthly rent}$
 $\$3,600 + \$3,000 = \$6,600, \text{ Doe receives}$
296. $60 \times \$150 = \$9,000, \text{ list price}$

- $\$7,650 \times .10 = \765 , 10% on sales price
 $\$7,650 + \$765 = \$8,415$, buyer paid
 $\$9,000 - \$8,415 = \$585$, buyer saved
297. Mar. 1, 1977 to Nov. 16, 1977 = $8\frac{1}{2}$ months 3 years = 36 months
 $8\frac{1}{2} \div 36 = \frac{17}{72}$ part of premium used
 $\frac{17}{72} \times \$158.40 = \37.40 , amount of premium used
 $\$158.40 - \$37.40 = \$121.00$, unused portion of premium
298. $100' \times \$15 = \$1,500$, property assessment
 $\$3,200$, house assessment
 $\$4,700$, total assessment
 $\$.040 \times \$4,700 = \$188.00$, total yearly tax
299. $\$6,800 \times .03 \times \frac{1}{12} = \17.00 , interest per month
 $\$6,200 \times .025 \times \frac{1}{12} = 12.92$, painting and repairs
 $.75 \times 6.8 \times \$24 \times \frac{1}{12} = 10.20$, taxes
 $6.2 \times \$4.50 \times \frac{1}{12} = 2.33$, insurance
 $\$600 \times .05 \times \frac{1}{12} = 2.50$, upkeep
 $\$44.95$, expenses
 $\$50.00 - \$44.95 = \$5.05$, cheaper per month to buy
300. $8 \times 2\frac{1}{2}\% = 20\%$, dep. in 8 yrs.
 $\$14,440 \div 80\% = 80\%$
 $\$14,400 \div 80 = \180 or 1% of value $100\% \times \$180 = \$18,000$
301. $\$5,000 \times \$3.50 \times \frac{1}{100} = \175
 $\$175 \times .05 = \8.75
 $\$175 + \$8.75 = \$183.75$, if tardy $\$175$, if paid on time
 $\$175 - \$8.75 = \$166.25$, if prompt
302. $\$566.66 \times .05 \times \frac{3}{12} = \7.08 , interest
303. $\$2,160 \div \$45 = 48$ payments
 $48 \div 12 = 4$ years
 October 1, 1974 to September 1, 1978
304. $\$150 \div 2\frac{1}{2}\% = \$150 \div 2\frac{1}{2} = \60 , 1% $100 \times \$60 = \$6,000$ amount
305. $43,560$ sq. ft. = 1 acre
306. $8 \times \$50 = \400 , total rental each month
 $12 \times \$400 = \$4,800$, annual rental
 5% of $\$4,800 = \240 , commission
 $\frac{1}{2}$ of $\$400 = \200 , initial commission on 8 units
 $\$240$ plus $\$200 = \440 , maximum commission
307. June 1975 to June 1978 = 3 years = 36 months
 January 1976-June 1978 = 17 months
 $\frac{1}{16}$ of $\$36 = \1.00 premium for 1 month
 $17 \times \$1.00 = \17.00
308. $\$25 - 5\% = \$25 - 5 = \$5$, 1% $100 \times \$5 = \500 , amount
309. $\$12,000 \times .025 \times 6 = \$1,800$ depreciation on house
 $\$2,000 \times .08 \times 6 = \960 , increase in value on lot
 $\$14,000 + \$960 = \$1,800 = \$13,160$, total value of property after 6 yr.
310. $2 \times \$55 = \110 , monthly rental $\$440 \times 12 = \$5,280$, gross
 $2 \times \$75 = \150 , monthly rental yearly income on the 6
 $2 \times \$90 = \180 , monthly rental apartments
 $\$440$, total monthly rental
311. June 15 to December 15 = 6 months = $\frac{1}{2}$ year
 $\$4,500 \times \frac{1}{2} \times .05 = \112.50 , credit to purchaser
312. $4 \times \$80 = \320 , annual interest
 $\$320 \div \$8,000 = .04$ or 4%
313. $\$7,850 + \$70 = \$7,920$ $100\% - 4\% = 96\% = \$7,920$
 $\$7,920 \div 96 = \82.50 , 1% of amount $100 \times \$82.50 = \$8,250$, amount

314. $\$20,000 + \$7,000 = \$27,000$ mortgaged
 $\$50,000 - \$27,000 = \$23,000$ taxable Tax stamp = $\$1.10$ per $\$1,000$
 $\$23,000 \div \$1,000 = 23$ taxable units per $\$1,000$
 $23 \times \$1.10 = \25.30 in documentary stamps
315. $\$1,800 \div \$20,000 = .09 = 9\%$
316. $55 \times \$35 = \$1,925$ cost by front footage
 $\$1,925 \times 10\% = \192.50 , commission
317. $3 \times \$25 = \75 , taxes for 3 years $\$75 + \$60 = \$135$, expenses
 $\$1,000 \times .02 \times 3 = \60 , interest $\$300 - \$135 = \$165$, profit
318. $\$10,000 \times .80 = \$8,000$, 80% of value
 $\$8,000 \div 100 = 80$ insurable units $80 \times \$0.60 = \48 , 3 years' insurance
 $\$48 \div 3 = \16 , one year's insurance
319. $\$1.55 \times \$5,800 \times \frac{1}{100} = \89.90 , school tax
320. $12 \times \$275 = \$3,300$, profit per year $\$3,300 = 8\%$
 $\$3,300 \div 8 = \412.50 , 1% of profit
 $100 \times \$412.50 = \$41,250$, total profit
321. 31 days in October
 $31 \times \$42.50 = \$1,317.50$, total income for month
322. $200 \times \$25 = \$5,000$, cost of land $40' \times 40' \times 30' = 48,000$ cu. ft.
 $48,000 \times \$0.35 = \$16,800$, cost of house
 $\$16,800 + \$5,000 = \$21,800$, total cost
323. 120 divided by $\frac{2}{3}$ acre = 160 lots
240 lots less 180 lots = 60 fewer lots
324. $12 \times \$250 = \$3,000$ rent for one year
 $\underline{- 2,600}$ expenses
 $\$ 400$
 $12 \times \$200$ rent = $\$2,400$, rent saved
Loses 4% interest on $\$50,000$, or $\$2,000$
 $\$2,400$ less $\$2,000 = \400
 $\$400$ plus $\$400 = \800
325. Display space is $40' \times 20'$, or 800 sq. ft. Each car requires 8 feet plus 2 feet, or 10 ft. of space
40 divided by 10 = 4 cars
326. $24' \times 32' = 768$ sq. ft.
 768 sq. ft. $\div 36$ sq. ft. = $21\frac{1}{3}$ (22 bags)
327. $80' \times 6' = 480$ sq. ft.
 $150' - 24' = 126'$
 $126' \times 6' = 756$ sq. ft.
 756 sq. ft. + 480 sq. ft. = $1,236$ sq. ft. The walk is inside the lot.
328. $\$1800 = 6\%$
 $\$1800 \div 6 = \300
 $\$300 \times 100 = \$30,000$
329. $\$30,000 = 82\%$ gross volume sales
 $\$30,000 \div 82 = \365.85365
 $\$365.85365 \times 100 = \$36,585.37$
330. $60' \times 120' = 7,200$ sq. ft.
 $30' \times 200' = 6,000$ sq. ft.
 $43,560$ sq. ft. - $6,000$ sq. ft. = $37,560$ sq. ft.
 $37,560$ sq. ft. $\div 7,200$ sq. ft. = 5.216 lots
331. $.02 \times \$10,828.80 = \216.576 depreciation each year
10 yrs. $\times \$216.576 = \$2,165.76$
 $\$10,828.80 - \$2,165.76 = \$8,663.04$ value of house
 $50' \times \$65 = \$3,250$ original cost of lot
 $1.22 \times \$3,250 = \$3,965$ lot value
 $\$3,965 + \$8,663.04 = \$12,628.04$

332. \$3,250 = lot cost; \$10,828.80 building cost
 $.05 \times \$10,828.80 = \541.44 to architect
 $\$3,250 + \$10,828.80 + \$541.44 = \$14,620.24$ = total cost
total cost - $\frac{3}{4}$ total cost (mortgage) = $\frac{1}{4}$ total cost = equity
 $\$14,620.24 \div 4 = \$3,655.06$
333. $20 \times 4\frac{3}{4}'' = 95''$
 $95'' \div 12 = 7.92'$
 $19 \times 6.85' = 130.15'$
 $130.15' + 7.92' = 138.07'$; $138.07' \div 3$ (feet in one yard) = 46.023 yards
334. $\$46,500 \times .065 \times \frac{1}{12} = \251.88
335.

5 @	\$17	=	\$ 85
9 @	15	=	135
8 @	16	=	128
5 @	18	=	90
5 @	3.75	=	18.75, garages

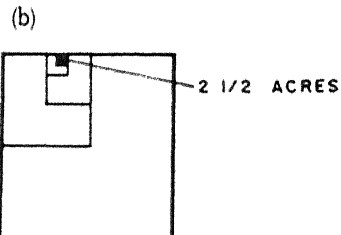
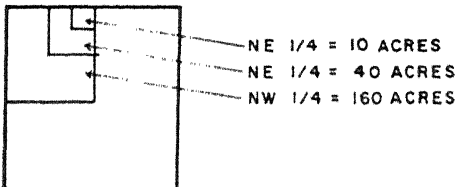
$\$456.75$, week
- 52 weeks = 1 year
 $52 \times \$456.75 = \$23,751$, gross income yearly
336. $\$6,500 \times .30 = \$1,950$, increase
 $\$6,500 + \$1,950 = \$8,450$, asking price
 $\$8,450 \times .25 = \$2,112.50$, reduction
 $\$8,450 - \$2,112.50 = \$6,337.50$, selling price
 $\$6,337.50 \times .05 = \316.88 , commission
 $\$2,112.50 + \$316.88 = \$2,429.38$, loss
 $\$2,429.38 - \$1,950 = \$479.38$, loss
337. $4\frac{1}{2}\%$ of \$874 = \$39.33, interest for one year
1 month = $\frac{1}{12}$ of \$39.33 or \$3.277
2 years, 8 months, 15 days = $32\frac{1}{2}$ months
 $32\frac{1}{2} \times 3.277 = \106.50
338. $66\frac{2}{3}\% = \frac{2}{3}$.05 = $\frac{5}{100}$ $\frac{2}{3} \times \frac{5}{100} = \frac{10}{300} = \frac{1}{30}$
 $\$200 \div \frac{1}{30} = \$6,000$, appraised valuation
339. $100 + 20 = 120\% = \$7,500$ $\$7,500 \div 120 = \62.50 or 1%
 $100 \times \$62.50 = \$6,250$, cost of house
340. $14 - 2 = 12$ lots for sale $75 \times 12 = 900$ front feet
 $\$33,750 \div 900 = \37.50 per front foot
341. $108,900 \div 43,560 = 2\frac{1}{2}$ acres
 $2\frac{1}{2} \times \$1,250 = \$3,125$, amount realized from sale
342. 160 sq. rd. = 1 acre
 $160 \div 5\frac{1}{2} = 29\frac{1}{11}$ rods
343. $160 - 42\frac{1}{4} = 117\frac{3}{4}$ acres $\frac{1}{3} \times 117\frac{3}{4} = 39\frac{1}{4}$ acres
 $117\frac{3}{4} - 39\frac{1}{4} = 78\frac{1}{2}$ acres unsold
344. 160 sq. rd. = 1 acre $90 \div 160 = \frac{9}{16}$ acre
 $\$7,883.30 \div 89\frac{9}{16} = \88.08 per acre
345. $100 \times 160 = 16,000$ sq. rd.
 $\frac{1}{4} \times 16,000 = 2,000$ $14,000 \div 140$ lots = 100 sq. rods
14,000 sq. rd.
346. $\$490.30 \div .042 = \$11,673.81$ or 58.25% of value
 $\$11,673.81 \div 58.25 = \200.4087 or 1% of value
 $100 \times \$200.4087 = \$20,040.87$ value of property
347. $43,560$ sq. ft = 1 acre $5\frac{1}{4} \times 43,560 = 228,690$ sq. ft.
 $228,690 - 36,690 = 192,000$ sq. ft. $60' \times 100' = 6,000$ sq. ft. in lot
 $192,000 \div 6,000 = 32$ lots
348. $500' + 350' + 500' + 350' = 1,700'$ $3' = 1$ yd.
 $1,700 \div 3 = 566\frac{2}{3}$ yd.
 $566\frac{2}{3} \times \$2 =$

$\$1,133.33$ cost of curb
 $\$3,200.00$ cost of sidewalk
 $\$4,333.33$, total cost

349. $100\% - 20\% = 80\%$ $20 \div 80 = .25$ or 25%
350. $\$3,120.50 \times 1\frac{1}{2} \times .055 = \257.44 , interest
351. $\$720 \div 16 = \45 , cost 1 acre
 $197 \times \$45 = \$8,865$, cost of 197 acres
352. $600' \times 300' = 180,000$ sq. ft. $180,000 \div 43,560 = 4.13^+$ acres
353. $\$9,080 + \$40 = \$9,120$ $\$9,120 = 95\%$ S.P. (less 5% com.)
 $\$9,120 \div 95 = \96 or 1% value $100 \times \$96 = \$9,600$, S. Price
354. $\$6,000 \times .055 \times \frac{1}{12} = \27.50 , interest first month
 $\$108 \div 12 = 9.00$, taxes and insurance
 $\$36.50$, total expenses
 $\$60 - \$36.50 = \$23.50$, paid on principal
 $\$6,000 - \$23.50 = \$5,976.50$, balance
355. $25' \times 30' \times 5' = 3,750$ cu. ft. 27 cu. ft. = 1 cu. yd.
 $3,750 \div 27 = 138.88$ cu. yd. $138.88 \times \$2.90 = \402.75 , cost
356. $\$6,000 \times .055 \times \frac{1}{4} = \82.50 , quarterly interest
357. $100 \times \$25 = \$2,500$, frontage $45' \times 45' \times 30' = 60,750$ cu. ft.
 $60,750 \times \$35 = 21,262.50$ by cu. ft.
 $\$23,762.50$, total cost
358. $\$193.50 \times 75 = \$14,512.50$, selling price of lot
359. 640 acres = 1 section
360. 36 sections = 1 township (6 miles long and 6 miles wide) each
 section one square mile
361. Find square root: Or estimate divisor, divide and average:

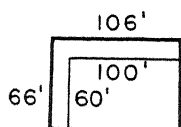
$$\begin{array}{r} 208.7 \\ \sqrt{43560.00} \\ 4 \end{array}$$

$$\begin{array}{r} 408 \) \ 3560 \\ \underline{3264} \\ 4167 \) \ 29600 \\ \underline{29619} \end{array}$$
 $43560 \div 200 = 217.8$
 $200 + 217.8 = 417.8$
 $417.8 \div 2 = 208.7$
362. 3 @ \$100 = \$300, per mo. $12 \times \$1,090 = \$13,080$, gross annual income
 2 @ \$125 = 250, per mo.
 1 @ \$150 = 150, per mo.
 6 @ \$65 = 390, per mo.
 $\$1,090$, total per mo.
363. $12 \times \$950 = \$11,400$ or 8% of investment
 $\$11,400 \div 8 = \$1,425$ or 1% $100 \times \$1,425 = \$142,500$ investment
364. Sec. 9 = 640 acres $\frac{1}{4}$ of 640 = 160 acres $\frac{1}{4}$ of 160 = 40 acres
365. $760' \times 500' = 380,000$ sq. ft. $380,000 \div 43,560 = 8.72$ acres
366. $.16 \times \$10,000 = \$1,600$ annual income
 $\$1,600 \div 12 = \133.33 mo. income
367. Assessment and tax millage
368. (a)



369. $2\frac{1}{2} \times .16 \times \frac{1}{100} \times \$24,500 = \$98$, total premium for 3 years
 $\$98 \div 36 = \2.72 , monthly cost
370. $12 \times \$300 = \$3,600$, yr. rental $\$4,800 - \$3,600 = \$1,200$ or 4%
 $\$1,200 \div 4 = \300 or 1% $100 \times \$300 = \$30,000$, amount over \$150,000
- $\$150,000 + \$30,000 = \$180,000$, total business
371. $8\frac{1}{2} \times \frac{1}{12} \times 180 =$ $\$127.50$, buyer owes seller
 $8\frac{1}{2} \times \frac{1}{12} \times \$240 =$ 170.00 , buyer owes seller
 $\$297.50$, buyer owes seller
 $3\frac{1}{2} \times \frac{1}{12} \times \$118 =$ 34.41 , seller owes buyer
 $\$263.09$, buyer owes seller
372. $43,560$ sq. ft. = 1 acre $1.87 \times 43,560 = 81,457.2$ sq. ft.
 $81,457.2 \times .225 = \$18,327.87$, selling price
373. $\$6,000 \times \frac{1}{100} \times \$1.55 = \$93.00$, school tax
374. $100 \times 108.9 = 10,890$ sq. ft. $10,890 \div 43,560 = .25$ or $\frac{1}{4}$ acre
375. $\$8,000 \times .80 = \$6,400$ assessed value
 $\$6,400 \times \frac{1}{100} \times \$4.20 = \$268.80$, annual tax
376. $\$8,000 \times .045 \times \frac{19}{24} = \285 interest $(9\frac{1}{2} \times \frac{1}{12} = \frac{19}{24} \text{ yr})$
377. $\$7,200 - \$6,000 = \$1,200$ gain $\$1,200 \div \$6,000 = .20$ or 20%
378. $\$9,300 \times .05 = \465 , broker's commission
 $\$465 + \$95 = \$560$, expenses
 $\$9,300 - \$560 = \$8,740$, seller received
379. $\$62,350 - \$15,750 = \$46,600$ $\$46,600 - \$36,675 = \$9,925$
 $\$9,925 + \$6,240 = \$16,165$, cash difference
380. 90 ft. = 30 yds. 1080 sq. yds. $\div 30$ yds. = 36 yds. = 108 ft.
381. Valuation of property = assumed perpetual income \div rate to be realized
 $\$1,134 \times 12 = \$13,608$, gross yr. income
 $\$13,608 - \$2,500 = \$11,108$ or 8% $\$11,108 \div .08 = \$138,850$, price
382. $125 \times \$2.25 = \281.25 , paving $160' \times 125' \times \$1.17 = \$3,400$
 $\$3,400 + \$281.25 =$ $\$3,681.25$, cost
 295.00 , profit
 $\$3,976.25$, selling price
383. $\$1,710$
 $\$15,000 \times .05 =$ 750 , commission on first \$15,000
 $\$ 960$
 $\$20,000 \times .03 =$ 600 , commission on next \$20,000
 $\$ 360 \div .015 = \$24,000$
 $\$15,000 + \$20,000 + \$24,000 = \$59,000$ Selling Price
384. $\$7,670 \div 65 = \118 , price per front foot
385. $\$325 - \$155 = \$170$, monthly income
 $12 \times \$170 = \$2,040$, net income per year
386. $\$57.75 \times 4 = \231 , year's interest payment
 $\$231 \div \$4,200 = .055$ or $5\frac{1}{2}\%$
387. $\$8,750 \times .05 = \437.50 , broker's commission
 $\$3,000 - \$500 = \$2,500$, mortgage balance
 $\$2,500 \times .05 \times \frac{1}{12} = \10.42 , interest due buyer
Taxes paid for January 1 to December 31 = 12 months
June 30 to December 31 = 6 months or $\frac{1}{2}$ year
 $\$136 \times \frac{1}{2} = \68 due seller
388. $\$12,000 \times .80 = \$9,600$, insured value of property
 $\$4,000 \times .80 = \$3,200$, insured value of furniture and goods
 $\$9,600 \times \frac{1}{1000} \times \$2.80 =$ $\$26.88$, premium on property
 $\$3,200 \times \frac{1}{1000} \times \$3.30 =$ $\$10.56$, premium on household goods
 $\$37.44$, yearly premium

- $3 \times \$37.44 = \112.32 , three-year premium on a yearly basis
 $2\frac{1}{2} \times \$37.44 = \underline{93.60}$ premium on a three-year basis
 $\$18.72$, saved on a three-year basis
389. $\$6,000 - \$2,000 = \$4,000$, income
 $\$4,000 \div \$40,000 = .10$ or 10%
390. 30 days in September $\frac{12}{30} = \frac{2}{5}$ of a month
 From January 1 to September 12 = $8\frac{2}{5}$ months
 $\$875.24 \times 8\frac{2}{5} \times \frac{1}{12} = \612.66 , credit to purchaser
391. $12 \times \$400 = \$4,800$, minimum monthly rental for a year
 $\$120,000 - \$80,000 = \$40,000$, gross yearly business over \$80,000
 $\$40,000 \times .05 = \$2,000$, 5% of gross business
 $\$4,800 + \$2,000 = \$6,800$, rent
392. $40 \times \$2,200 = \$88,000$, selling price = 110%
 $\$88,000 \div 110 = \800 or 1%
 $100 \times \$800 = \$80,000$, cost
393. $12 \times \$280 = \$3,360$ income
 $\$3,360 \div \$42,000 = .08$ or 8%
394. $264' \times 660' = 174,240$ sq. ft. $43,560$ sq. ft. = 1 acre
 $174,240 \div 43,560 = 4$ acres
 $4 \times \$800 = \$3,200$ cost of lot
395. $320 \times \frac{1}{2} \times .05 \times \$175 = \$1400$, commission
396. $\$3,600 \div .06 = \$60,000$ cost of farm
397. $32 \times 40 \times \$9.50 = \$12,160$ cost $\$12,160 \times .05 = \608 , depreciation
 $\$12,160 - \$608 = \$11,552$, appraisal
398. $30' \times 200' = 6,000$ sq. ft. $43,560 - 6,000 = 37,560$ sq. ft.
 $60' \times 120' = 7,200$ sq. ft. in lot $37,560 \div 7,200 = 5.21$ + lots
399. $100 \times 12 = \$1,200$ yearly income $\$1,200 \div \$12,000 = .10$ or 10%
400. $43,560 \times 10 = 435,600$ sq. ft. $435,600 - 85,000 = 350,600$ sq. ft.
 $50' \times 100' = 5,000$ sq. ft., each lot $350,600 \div 5,000 = 70.1$ lots
- 401.



$$\begin{aligned}
 106' \times 66' &= 6,996 \text{ sq. ft.} \\
 100' \times 60' &= \underline{6,000} \text{ sq. ft.} \\
 &996 \text{ sq. ft. for walk}
 \end{aligned}$$

402. $996 \times \$0.23 = \229.08 cost of walk
403.
$$\begin{array}{r}
 2,583 \\
 4,905 \\
 \hline
 7,488 \text{ sum}
 \end{array}
 \qquad
 \begin{array}{r}
 9,421 \\
 2,892 \\
 \hline
 6,529 \text{ difference}
 \end{array}
 \qquad
 \begin{array}{r}
 7,488 \\
 6,529 \\
 \hline
 959 \text{ excess}
 \end{array}$$
404. $80 \times \$250 = \$20,000$, cost $100 \times \$750 = \$75,000$, selling price
 $\underline{6,500}$ dev. cost $\underline{26,500}$ total cost
 $\$26,500$, total cost $\$48,500$, net profit
405. $30 \times 16 = 480$ sq. rd. 160 sq. rd. = 1 acre
 $480 \div 160 = 3$ acres
406. $\$325 \times 12 \times 2\frac{1}{2} = \$9,750$, value of the home
407. $2,640 \times 9,900 = 26,136,000$ sq. ft.
 $43,560$ sq. ft. = 1 acre

- $26,136,000 \div 43,560 = 600$ acres
 $10\% + 10\% + 20\% = 40\%$
 $.40 \times 600 = 240$ acres for streets, playgrounds and factory
 $600 - 240 = 360$ acres left for homesites
 $2 \times 360 = 720$ one-half acre sites
408. $15' \times 34' = 510$ sq. ft. $2 \times 510 = 1,020$, sq. ft. both sides
 $$.08 + $.026 = $.106 per sq. ft. $1,020 \times $.106 = \$108.12$, cost$
409. $50' \times 150' = 7,500$ sq. ft. area
 $\$7,500 \div 7,500 = \1.00 cost per sq. ft.
 $\$7,500 \div 50 = \150 per front foot
410. $\frac{1}{6} + \frac{5}{8} = \frac{19}{24}$ acre in use
 $1 - \frac{19}{24} = \frac{5}{24}$ in woodland
 $\frac{5}{24} = 50$ acres $50 \div 5 = 10$ acres in one twenty-fourth
 $24 \times 10 = 240$ acres in whole farm
411. $115\% = \$9,430$ $\$9,430 \div 115 = \82 , or 1% of value
 $100 \times \$82 = \$8,200$, cost
 $\$8,200 \times .60 \times .045 \times 4 = \885.60 , taxes
 $\$8,200 \times .03 \times 4 = \984 , interest lost
 $\$9,430 - \$8,200 = \$1,230$ gain
 $\$984.00 + \$885.60 = \$1,869.60$, loss
 $\$1,869.60 - \$1,230 = \$639.60$ loss
412. 160 sq. rd. = 1 acre
413. $3,250 \times \$.14 = \$ 455$, hillside
 $2,000 \times \$.085 = 170$, stream
 $7,250 \times \$1 = 7,250$ flat area
 $12,500$ sq. ft. = $\$7,875$, total appraisal
 $\$7,875 \div 12,500 = \63 per sq. ft.
414. $30' \times 30' \times 30' = 27,000$ cubic feet
 $\$9,000 \div 27,000 = \$33\frac{1}{3}$ per cu. ft.
415. $30' \times 6' = 180$ sq. ft.
 $180 \times \$2.75 = \495.00 , cost of driveway
416. $16\frac{1}{2}$ feet = 1 rod or perch
417. 66 feet = 1 chain
418. $\$7,200 \times .06 \times \frac{1}{12} = \36 , first month's interest
419. $20 \div 5 = 15$ acres for homesites
 $50' \times 150' = 7,500$ sq. ft. in each lot
 $43,560$ sq. ft. = 1 acre
 $15 \times 43,560 = 653,400$ sq. ft. for subdivision
 $653,400 \div 7,500 = 87$ + lots
420. $12 \times \$600 = \$7,200$, yearly rent
 $12 \times \$115,000 = \$1,380,000$ gross business per year
 $\$9,300 - \$7,200 = \$2,100$ five per cent over gross of business
 $\$2,100 \div .05 = \$42,000$, amount over gross minimum
 $\$1,380,000 + \$42,000 = \$1,422,000$, gross volume of year's business
421. $\$10,000 \div \$1,000 = 10$ taxable units
 $10 \times \$19 = \190 , taxes
422. 1 pace = 3'
 $3 \times 3' = 9'$
 $30 \times 3' = 90'$
 $90' - 9' = 81$ feet
423. $20 + 20 + 10 + 10 = 60$ yards
 $60 \times 3' = 180'$
 $180' \div 2' = 90$
424. $5,280' \times 5,280' = 27,878,400$ sq. ft.
 $27,878,400 \div 43,560 = 640$ acres

$$3 \times 640 \text{ acres} = 1920 \text{ acres}$$

425. $18' + 27' = 45'$

$$450' - 45' = 405' \text{ length of building}$$

$$9 \text{ sq. ft.} = 1 \text{ sq. yd.}$$

$$9 \times 12,825 \text{ yards} = 115,425 \text{ sq. ft. area}$$

$$115,425 \text{ sq. ft.} \div 405' = 285'$$

426. $100\% = \text{first year commission}$

$$120\% = \text{second year commission}$$

$$144\% = \text{third year commission}$$

$$\$7,280 \div 144 = \$5,055.56$$

427. $85' \times 30' = 2,550$, lot 1

$$85' \times 50' = 4,250$$
, lot 2

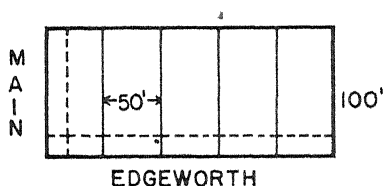
$$85' \times 50' = 4,250$$
, lot 3

11,050, 3 lots involved in transaction

$$100' \text{ on Main} \times \$112.50 = \$11,250$$

$$100' \text{ on Edgew.} \times \$87.25 = \$8,725$$

$$\$19,975$$



428. $85' \times 30' = 2,550$, sq. ft. can be used for building

429. $60 \times \$75 = \$4,500$, cost by front footage

$$\$7,500 = \text{total amount to be invested} \quad \$7,500 - \$4,500 = \$3,000$$

$$\$3,000 \div \$75 = 4,000 \text{ sq. ft.}$$

$$60' \times 100' = 6,000 \text{ sq. ft.}$$

$$10,000 \text{ sq. ft.}$$

430. $\$20,000 - \$8,555 - \$1,655.10 = \$9,789.90$, Thompson's equity

$$\$18,450 - \$13,841.79 = \$4,608.21$$
, Tyler's equity

$$\$9,789.90 - \$4,608.21 = \$5,181.69$$
, difference in equity due

Thompson

$$.20 \times \$5,181.69 = \$1,036.34 \text{ cash}$$

$$\$5,181.69 - \$1,036.34 = \$4,145.35$$
, third mortgage against Tyler

431. $\$250 \times .06 \times 1 = \15.00 $\$250 + \$15 = \$265.00$, due

$$\$16.25 \times 11 = \$178.75 \text{ paid} \quad \$265 - \$178.75 = \$86.25 \text{ bal. due}$$

432. $\$126 \times 2\frac{1}{2} \times \frac{1}{12} = \26.25 $\$126 - \$26.25 = \$99.75$, refund

433. $\$13,300 + \$1,050 + \$350 = \$14,700$

$$\$14,700 \times .00425 = \$62.48$$
, increased tax

434. $\$12,500 \times .032 \times \frac{1}{2} = \200 , refund

435. $.80 \times \$6,000 = \$4,800$ $\$4,800 \times \frac{1}{1000} \times \$2.80 = \$13.44$

$$.80 \times \$4,000 = 3,200 \quad \$3,200 \times \frac{1}{1000} \times \$3.30 = \$10.56$$

$$2\frac{1}{2} \times \$24 = \$60 \text{ premium} \quad \$24.00$$

436. $\$50 \times 150 = \$7,500$ assessment $$.02 \times \$7,500 = \$150$

$$\$150 \times 30 = \$4,500 \text{ taxes for 30 years}$$

$$\$15,000 + \$4,500 = \$19,500 \text{ invested}$$

$$150 \times \$300 = \$45,000 \text{ selling price}$$

$$\$45,000 - \$4,500 = \$40,500$$
, selling price less broker's com.

$$\$40,500 - \$19,500 = \$21,000 \text{ profit}$$

437. $5 \times \$40 = \200 , "A" offer $5 \times 150 \times \$.30 = \225 , "B" offer
 $\$225 - \$200 = \$25$, "B" offer better
438. $30 \times 100 \times .05 \times 5 \times \$2.50 = \$1,875$, broker's earnings
439. $36 \times 40 \times 14 \times \$.55 = \$11,088$, reproduction cost
440. $\$8,000 \times .60 \times \frac{1}{100} \times \$4.21 = \$202.08$, total annual tax
441. $4 \times \$25 = \100 $\$13.20 + \$18 + \$6 = \37.20 , expense
 $6 \times \$40 = \240 $\$440 - \$37.20 = \$402.80$, net to owner
 $2 \times \$50 = \100
 total rent = $\$440$
 $\$440 \times .03 = \13.20 , commission
442. $210' \times 200' = 42,000$ sq. ft. $6,000 \div 42,000 = \frac{1}{7}$ or
 $50' \times 90' \times 8 = 36,000$ sq. ft. .1428 or 14.28%
 saved for roads = 6,000 sq. ft.
443. 20 mills = $\$.02$
 $\$54,500 \times \$.02 = \$1,090$ taxes
444. $\$484 \div \$11,000 = \$0.44$ or 44 mills
 $\$.044 \times 100 = \4.40 tax per $\$100$
445. $50' \times 100' \times \$.75 = \$3,750$, selling price
 $\$3,750 \times .05 = \187.50 , commission
 $\$3,750 - \$187.50 = \$3,562.50$, owner receives
446. $\$10,000 - \$4,000 = \$6,000$ balance $5 \times 12 = 60$ mo. in 5 yr.
 $\$6,000 \div 60 = \100 per month
 $\$6,000 \times .05 \times \frac{1}{12} = \25 , interest at the end of the first month
447. $12 \times \$75 = \900 annual rent $12' \times 20' = 240$ sq. ft. space
 $\$900 \div 240 = \3.75 , annual rate per square foot
448. $.80 \times \$10,000 = \$8,000$
 $\$8,000 \div \$100 = 80$ taxable units
 $80 \times \$3.80 = \304 taxes
449. $33' \times 45' = 1,485$ sq. ft. $1,560 \times \$12.85 = \$20,046.00$
 $5' \times 15' = 75$ 1,560 sq. ft.
450. $\frac{1}{4} \times \$1,325.28 = \331.32 pd. by seller
 $\$331.32 \div 3 = \110.44 tax per month
 $\$110.44 \div 2 = \55.22 , tax exemption for $\frac{1}{2}$ mo.
 $\$331.32 + \$55.22 = \$386.54$ credit to seller
 $\$1,325.28 - \$386.54 = \$928.74$ seller owes
451. $\$15,000 \times .97 = \$14,550$ insurable
 $\$20,000 - \$15,000 = \$5,000$ remainder
 $\$5,000 \times .85 = \$4,250$ insurable
 $\$14,550 + \$4,250 = \$18,800$ total insurable loan
452. $\$24,000 \times .90 = \$21,600$ insurable. $\$21,600 \div 100 = 216$ per $\$100$
 $216 \times \$.54 = \116.64 premium for 3 yr. Feb. 1, 1978—Sept. 1, 1979
 3 yr. = 36 mo. $36 - 17 = 19$ mo. to be returned
 $\$116.64 \div 36 = \3.24 mo. prem. $\$3.24 \times 19 = \61.56 charged buyer
453. Lot: First year $\$5,000.00 \times .04 = \$5,200.00$
 Second year $\$5,200.00 \times .04 = \$5,408.00$
 Third year $\$5,408.00 \times .04 = \$5,624.32$
 Fourth year $\$5,624.32 \times .04 = \$5,849.29$
 Building: 28 feet \times 38 feet = 1,064 square feet
 $1,064 \times \$12.50 = \$13,300$ reproduction cost new
 $4 \times 2\frac{1}{2}\% = 10\%$ depreciation
 $.10 \times \$13,300 = \$1,330$
 $\$11,970 =$ present value of building
 $\$5,849.29 + \$11,970 = \$17,819.29$ (rounded number for listing $\$17,820$)

454. $28 \text{ feet} \times 40 \text{ feet} \times \$14.50 = \$16,240.00$ $80' \times \$31.50 = \25.20 (lot value)
 $11 \text{ feet} \times 13 \text{ feet} \times \$ 8.25 = \$ 1,179.75$ (depreciation is 2% for 8 years)
 $13 \text{ feet} \times 21 \text{ feet} \times \$10.75 = \$ 2,934.75$ $(16\% \times \$21,324.50 = \$3,411.92)$
Repairs and impr. = \$ 970.00
 \$21,324.50
 $\$21,324.50 - \$3,411.92$ (depreciation) = $\$17,912.58$
 $\$17,912.58$ (building) + $\$2,520.00$ (land) = $\$20,432.58$
455. $30 \text{ feet} \times 24 \text{ feet} \times 25 \text{ feet} = 18,000 \text{ cubic feet}$
 $18,000 \text{ cubic feet} + 1,437 \text{ cubic feet} = 19,437 \text{ cubic feet}$
 $19,437 \times \$ 835 = \$16,229.89$
 $\$16,229.89 + \$384.57 = \$16,614.46$ ($2 \times 3\frac{1}{3} \times \$16,614.46 = \$1,107.62$ depreciation)
 $\$16,614.46 - \$1,107.62 = \$15,506.84$
456. $7 \times \$2,400 = \$16,800$
 $5 \times \$2,850 = \$14,250$
 $6 \times \$3,200 = \$19,200$
 \$50,250
5% of $\$50,250 = \$2,512.50$ total commission
10% of $\$2,512.50 = \251.25 to Flynn
 $\$2,512.50 - \$251.25 = \$2,261.25$
40% of $\$2,261.25 = \904.50 to Crouch
 $\$2,261.25 - \$904.50 = \$1,356.75$ to Evans
457. $63 \times \$115 = \$7,245$, selling price adjacent lot
 $\$115 \times .23 = \26.45 more for corner lot
 $\$115 + \$26.45 = \$141.45$ selling price of corner lot
 $63 \times \$141.45 = \$8,911.35$
 $\$7,245 + \$8,911.35 = \$16,156.35$ total selling price
458. $\$9,350 \times .06 = \561 commission. $\$561 \times .10 = \56.10 listing fee.
 $\$561 - \$56.10 = \$504.90$ $\frac{1}{2}$ of $\$504.90 = \252.45 Salesman's commission.
 $\$561 \times .12 = \67.32 advertising
 $\$561 \times .07 = \39.27 office expense.
 $\$56.10 + \$252.45 + \$67.32 + \$39.27 = \$415.14$ total expenses
 $\$561.00 - \$415.14 = \$145.86$ net commission
459. $990' \times 660' = 653,400 \text{ sq. ft.}$
 $43,560 \text{ sq. ft.} = 1 \text{ acre}$
 $653,400 \div 43,560 = 15 \text{ acres}$
 $15 \times \$3,000 = \$45,000$, selling price of land
460. $60 \times \$150 = \$9,000$, selling price
461. $\$1,090 \times .04 \times 1 = \43.60 simple interest for one year
 $\$1,090 \times .04 \times \frac{1}{2} = \21.80 , interest for $\frac{1}{2}$ year
 $\$1,090 + \$21.80 = \$1,111.80$
 $\$1,111.80 \times .04 \times \frac{1}{2} = \22.24 interest second half of year
 $\$21.80 + \$22.24 = \$44.04$ compound interest for 1 year
 $\$44.04 - \$43.60 = \$4.44$ difference between simple and compound interest
462. $\$190 + \$1,200 + \$295 + \$50 = \$1,735$, expenses
 $\$9,000 + \$1,735 = \$10,735$, invested in house
 $\$11,250 - \$10,735 = \$515$, gain
463. 1975 sales = 100%; 1976 sales = 125%;
1977 sales = 150%
 $\$300,000 \div 150 = 2,000 \times 100\% = \$200,000$ 1975 sales;
 $\$200,000 \times 125\% = \$250,000$ 1976 sales
464. $8\frac{1}{3} = 25\frac{1}{3} = \frac{100}{12}$
 $\frac{100}{12}\% = \frac{1}{12}$
 $\frac{1}{12}$ of $\$14,160 = \$1,180$, loss
 $\$14,160 - \$1,180 = \$12,980$, selling price
465. $\frac{2}{3}$ of $\$12,000 = \$8,000$ —Amount of mortgage

- 1,000—Deposit money
\$9,000—Available
- \$12,000 - \$9,000 is \$3,000—Amount needed
466. Three years is 36 months $\$72.00 \div 36 = \2.00
467. $\$240 \times 12 = \$2,880$ yearly rental
 $\$2,880 = 9\%$ of cost
 $\$2,880 \div 9 = \320 or 1% of cost
 $100 \times \$320 = \$32,000$, cost of house
468. $.60 \times \$16,000 = \$9,600$ assessed value
 $\$9,600 \div \$100 = 96$ taxable units
 $96 \times \$2.50 = \240 taxes
469. $\$58.45 \times 12 = \701.40 , interest payment for year
 $5\frac{1}{4}\% = .0525$
 $\$701.40 \div .0525 = \$13,360$, amount of original loan
470. $\$105 \times 2 = \210 , annual interest payment
 $\$210 \div \$6,000 = .035$ or $3\frac{1}{2}\%$, interest rate
471. $320 \times \$175 = \$56,000$, sale of ranch
 $\$56,000 \times .05 = \$2,800$, 5% commission
 $\frac{1}{2}$ of \$2,800 = \$1,400, salesman's half of commission
472. $12 \times \$138 = \$1,656$, yearly mortgage payment
 $4\frac{1}{2} \times \$1,656 = \$7,452$, 90% of income
 $\$7,452 \div 90 = \82.80 , 1% of income
 $100 \times \$82.80 = \$8,280$, minimum gross annual salary necessary
473. $48' \times 30' \times 9' = 12,960$ cu. ft.
 27 cu. ft. = 1 cu. yd.
 $12,960 \div 27 = 480$ cu. yd.
 $480 \times \$0.35 = \168 , cost of excavation
474. $\$24,500 \times .04 = \980 , 4% reduction in sales price
 $\$24,500 - \$980 = \$23,520$, new selling price
 $\$23,520 \times .06 = \$1,411.20$, 6% broker's commission
 3% of \$1,411.20 = \$42.34, due M.L.S.
 $\$1,411.20 - \$42.34 = \$1,368.86$, for commissions
 20% of \$1,368.86 = \$273.77 "A's" commission
 $\$1,368.86 - \$273.77 = \$1,095.09$, balance of commission
 35% of \$1,095.09 = \$383.28
475. $\$260,000 \div \$6,500,000 = .04$ or 40 mills
 A tax rate of 30 mills would not provide sufficient funds to meet the planned budget.
476. Answer with problem.
477. 12 mos. $\times 96 = \$1,152$ annual interest
 Using a simple proportion method:
 $\$1,152 : 8\% :: (x) : 100\%$ $\$1,152 \div 8\% = (x)$, or = \$14,400
 $\$14,400 : 80\% :: x : 100\%$, or \$18,000
 80% of \$18,000 is \$14,400, amount of mortgage
478. $8 \times .02$ of \$9,216 = \$1,474.56
 $\$9,216.00 - \$1,474.56 = \$7,741.44$, depreciated value
 70 ft. front $\times \$63 = \$4,410$ (cost of lot)
 $.015 \times \$4,410 = \66.15 (increase in 1 year lot)
 $8 \times \$66.15 = \529.20 (increase in 8 years lot)
 $\$529.20$ plus \$4,410 = \$4,939.20
 $\$7,741.44$ plus \$4,939.20 = \$12,680.64
479. $32.5 \times 40 = 1,300$ sq. ft.
 $1,300 @ \$13.50 = \$17,550$
 Less: 1 yr. depreciation = $.05 \times \$17,550 = \877.50
 $\$17,550 - \$877.50 = \$16,672.50$, appraisal value

480. Gross Income: $12 \times \$1,250 = \$15,000$
 Expenses: $\frac{5,900}{\$9,100}$
- $\frac{\$9,100}{.07} = \$130,000$
481. Gross Income: $\$22,500$
 Expenses: $\frac{10,500}{\$12,000}$
- $\$12,000 \div 12\% = \$100,000$, value of the property
482. $36 \times 6 \times \frac{1}{4} = 54$ cu. ft.
 54 cu. ft. $\div 27$ cu. ft. = 2 cu. yds.
 $2 \times \$4.10 = \8.20 (concrete)
 216 sq. ft. @ $\$.87 = \187.92 (labor)
 $\$8.20 + \$187.92 = \$196.12$, cost of driveway
483. $\$3,000 \div 5\% = \$60,000$, fair estimate
484. $3,250$ sq. ft. @ $\$.14 = \455
 $2,000$ sq. ft. @ $\$.085 = 170$
 $\frac{7,250 \text{ sq. ft. @ } \$1.00 = 7,250}{12,500 \quad \$7,875}$
 $\$7,875$ divided by $12,500 = \$63$, price per sq. ft.
485. $\frac{\$18,000}{\$125} = 144$ GRM
486. $3\frac{1}{2}\%$ of $\$24,000 = .035 \times \$24,000 = \$840$, profit
 $\$24,000$ plus $\$840 = \$24,840$, price to Oliver
 $.115 \times \$24,840 = \$2,856.60$, loss to Oliver
 $\$24,840$ minus $\$2,856.60 = \$21,983.40$, price to Jordan
487. $3 \times \$135 = \405 , gross rental
 10% of $\$405 = \40.50 , Christopher's commission
 $3 \times \$60 = \180 , mortgage payment
 $\$180$ plus $\$40.50 = \220.50 , total payments
 $\$405$ minus $\$220.50 = \184.50 , net to Hall
488. $\frac{1}{8}$ inch = 1 foot or 1 inch = 8 feet
 13.5 inches = $8 \text{ ft.} \times 13.5 = 108$ feet, width
 17.75 inches = $8 \text{ ft.} \times 17.75 = 142$ feet, depth
489. 105 (coarse mix) and 45 (fine mix) equals 150 total parts
 Per cent rate = fractional part of whole = $\frac{105}{150}$ (or $R = P/B$)
 105 parts divided by 150 parts equals 70 per cent
490. Total length of fencing = sides + rear = $125 + 125 + 80 = 330$ feet
 $330 \times 6 \text{ ft.} = 1,980$ sq. feet
 $9 \text{ sq. ft.} = 1 \text{ sq. yd.}$ 1,980 divided by 9 = 220 sq. yds.
 $220 \times \$1.50 = \330 , cost of fence
491. 5×4 sections = 20 sections
 20×7 lots = 140 lots
492. $75 \text{ ft.} \times 125 \text{ ft.} = 9,375$ sq. ft. (total area of lot).
 35% (for house) + 20% (condemned) = 55% of lot *used*.
 $100\% - 55\% = 45\%$ of lot *remains*.
 45% of $9,375$ sq. ft. = $.45 \times 9,375 = 4,218.75$ sq. ft. remaining.
493. $\$100$ selling price (100%) $\times 25\% = \$25$ (profit)
 $\$100$ selling price minus $\$25$ profit = $\$75$ (cost)
 $\$25$ divided by $\$75 = .333$, or $33\frac{1}{3}\%$ of cost
494. 120 acres = 240 one-half acre lots
 120 acres divided by $\frac{2}{3}$ ($120 \times \frac{3}{2} = 180$), or 180 lots
 240 minus 180 lots = 60 fewer lots
495. Owner pays utilities:

$10 \times \$100 = \$1,000$ gross rent less $\$120 = \880 net rental
 Tenant pays utilities: $10 \times \$80 = \800 net rental
 $\$880 - \$800 = \$80$ more rent to owner

496. $L = 2W$

$2W \times W = 800$ sq. ft. $2W^2 = 800$ sq. ft.

$W^2 = 400$ sq. ft.

$W = 20$ ft. ($20 \times 20 = 400$)

$L = 40$ ft.

Space needed for each car = 8 ft. + 2 ft. = 10 ft.

40 ft. divided by 10 ft. = 4 (4 cars can be placed in space)

497. "A" house 75% of $\$40,000 = \$30,000$ "B" house 75% of $\$36,000 = \$27,000$

$30 (\$1,000) \times \frac{\$8.06}{\$1,000} = \241.80 $27 (\$1,000) \times \frac{\$8.06}{\$1,000} = \217.62

$\$241.80$ minus $\$217.62 = \24.18 or

$\$3,000$ difference between mortgage $\times \frac{\$8.06}{\$1,000} = \$24.18$

498. Bi-monthly interest is paid 6 times a year

$\$79.17 \times 6 = \475.02

$\$475.02$ (interest) divided by $\$9,500$ (principal) = .05 or 5% annual interest rate

499. Let gross return = 100%

Then, net return = 100% - 15% = 85% of gross return

Net return = $\$47,600 \times .06 = \$2,856 = 85\%$ of gross return

Base (gross) = Percentage ($\$2,856$) divided by Rate (85%)

Base = $\$2,856 / 85\% = \$2,856 / .85 = \$3,360$ annual gross return

$1/2$ of $\$3,360 = \$1,680$ semi-annual gross income

500. Income divided by rate equals value. $\$4,000$ divided by .08 = $\$50,000$, "A" value

$\$5,600$ divided by .08 = $\$70,000$, "B" value

$\$70,000$ minus $\$50,000 = \$20,000$

Rate = Percentage divided by Base

$\$20,000$ divided by $\$50,000 = .40$ or 40%

501. 4% of $\$50,000 = \$2,000$ return

$12 \times \$200 = \$2,400$, present rent

$12 \times \$250 = \$3,000$, rent from duplex unit

$\$3,000$ minus $\$2,600$ (expenses) = $\$400$, net

$\$2,400$ minus $\$2,000 = \400 , present rent over income

$\$400$ plus $\$400 = \800 , gain

502. 100 ft. \times 225 ft. = 22,500 sq. ft., lot area

70 ft. \times 90 ft. = 6,300 sq. ft. (floor area) \times 3 = 18,900 sq. ft.

18,900 \times $\$23 = \$434,700$ (building cost)

22,500 sq. ft. minus 6,300 sq. ft. = 16,200 sq. ft. (balance of lot)

16,200 \times $\$2 = \$32,400$ (landscaping and paving)

100 \times $\$250 = \$25,000$, cost of lot

$\$434,700$ plus $\$25,000$ plus $\$32,400 = \$492,100$, total cost

10% return on $\$492,100 = \$49,210$

$\$492,100$ plus $\$49,210 = \$541,310$, selling price

503. Let 1974 = 100% sales

1975 sales = 100% + 20% = 120% of 1974 sales

1976 sales = 120% + 20% of 120% = 144% of 1974 sales

1977 sales = 144% + 20% of 144% = 172.8% of 1974 sales

(20% of 144% = $.20 \times 1.44 = .288 = 28.8\%$; 144% + 28.8% = 172.8%)

172.8% of 1974 sales = 18,000; Base = Percentage/Rate

Base (1974 sales) = $18,000 / 172.8\% = 18,000 / 1.728 = 10,417$

504. 78×25 feet = 1,950 sq. ft.

1,950 \times 40 cents = $\$780$

505. (Interest divided by principal = rate of interest)

\$600 divided by \$12,000 = .05, or 5%

506. (a)

year	month	day
1978	6	15
- 1977	1	2
<hr/>		
1	5	13

 = 1 year, 5 months, 13 days in force

- (b) $\frac{1}{36}$ of \$108 = \$3, premium per month

$\frac{1}{30}$ of \$3.00 = \$.10, premium per day

17 mos. = $17 \times \$3.00 = \51.00

13 days = $13 \times \$.10 = \underline{1.30}$

\$52.30 Expired premium

\$108 minus \$52.30 = \$55.70, unexpired premium

507. 12 mos. \times \$260 = \$3,120, annual interest

Amount of mortgage = interest (\$3,120) divided by 8% rate = \$39,000

Simple proportion—

Mortgage of \$39,000 : 65% :: Appraised value : 100% or

$\frac{\$39,000}{.65} = \$60,000$, appraised value of property

508. $12 \times \$275 = \$3,300$ annual interest

Principal (mortgage) = Interest divided by Rate. ($8\frac{1}{2}\% = .0825$)

Amount of mortgage = $\$3,300 / .0825 = \$40,000$

509. 4 quarters \times \$212.50 = \$850, annual interest

Interest \$850 divided by \$10,000, mortgage = $8\frac{1}{2}\%$ interest rate

510. 900 ft. \times 400 ft. = 360,000 sq. ft.

43,560 sq. ft. = 1 acre

360,000 divided by 43,560 = 8.26 acres (approximately) (8.26446 rounded off)

511. 50% of \$36,250 = \$18,125, tax assessment

40 mills = \$.040 per dollar tax assessment

$.040 \times \$18,125 = \725 , amount of tax

512. 4 years \times 3% dep. = 12%

12% or .12 of \$42,500 = \$5,100, depreciation

\$42,500 minus \$5,100 = \$37,400, current value

How would you prove your answer?

At the end of 4 years, the property has depreciated \$5,100. Current value is 88% of original purchase price. 88% is to \$37,400 as 100% is to (X). \$37,400 divided by 88% equals \$42,500, original price.

513. 10% of \$60,000 = \$6,000 plus \$1,200, expenses = \$7,200

\$7,200 divided by 4 units = \$1,800, per unit

$\frac{1}{2}$ of \$1,800 = \$150, rental per unit

514. $4 \times \$200 \times 12 \text{ mos.} = \$9,600$

$4 \times \$190 \times 12 \text{ mos.} = \underline{\$9,120}$

Total rent income \$18,720

\$18,720 minus \$8,250 (expenses) = \$10,470, net income

\$10,470 divided by \$85,000 = 12.3%, rate of return

515. The owner will receive 100% selling price, less 6% commission, or 94%

94% selling price = \$23,500

Selling price = \$23,500 divided by 94% = \$25,000

516. $\frac{1}{12}$ inch equals 10 feet, thus 1 inch equals 120 feet

5 inches \times 120 feet equals 600 feet (width)

517. 160 square rods in an acre

80 rods by 40 rods equals 3,200 square rods

3,200 divided by 160 square rods equals 20 acres

518. The unusable outside walls are 6 inches or $\frac{1}{2}$ foot on each wall.

The inside width is then

78 ft. minus 1 ft. (2 walls) = 77 ft.

and the inside length is then

$$130 \text{ ft. minus } 1 \text{ ft. (2 walls)} = 129 \text{ ft.}$$

Therefore, the square foot inside usable area is

$$77 \text{ ft.} \times 129 \text{ ft.} = 9,933 \text{ sq. ft.}$$

519. $50 \text{ ft. by } 100 \text{ ft.} = 5,000 \text{ square feet}$

$$5,000 \times \$1.50 = \$7,500, \text{ selling price}$$

$$6\% \text{ of } \$7,500 = \$450, \text{ commission}$$

$$\$7,500 \text{ minus } \$450 = \$7,050, \text{ net due King}$$

520. $12 \times \$140 = \$1,680, \text{ annual return (Rate} = P/B)$

$$\$1,680 \text{ divided by } \$21,000 = 8\%$$

521. $100\% \text{ selling price, less } 5\% \text{ commission, equals } 95\%$

$$\$56,900 \text{ plus } \$100 \text{ (advertising) equals } \$57,000$$

$$\$57,000 \text{ divided by } 95\% = \$60,000, \text{ selling price}$$

522. Rectangular area of lot = $100 \text{ ft.} \times 50 \text{ ft.} = 5,000 \text{ sq. ft.}$

$$\text{Triangular area of lot} = \frac{1}{2}bh = \frac{25 \times 50}{2} = \frac{1,250}{2} = 625 \text{ sq. ft.}$$

$$\text{Total lot area} = 5,000 \text{ sq. ft.} + 625 \text{ sq. ft.} = 5,625 \text{ sq. ft.}$$

$$5,625 \text{ sq. ft.} \times \$1.20 = \$6,750 \text{ (market value)}$$

$$40\% \text{ of } \$6,750 = \$2,700 \text{ (assessed value)}$$

$$60 \text{ mills} \times \$2,700 = .060 \times \$2,700 = \$162 \text{ annual tax}$$

523. Area of Trapezoid = $\frac{h(b+B)}{2} = \frac{25(100+120)}{2} = \frac{5,500}{2} = 2,750 \text{ sq. ft.}$

$$\$2,750 \text{ divided by } 2,750 \text{ sq. ft.} = \$1.00 \text{ price per sq. ft.}$$

524. $7\% \times 8 \text{ years} \times \$25,500 = \$14,280, \text{ increase in value}$

$$\$25,500 \text{ plus } \$14,280 = \$39,780, \text{ present value}$$

525. $3 \times \$150 \times 12 \text{ months} = \$5,400$

$$12 \times \$110 = 1,320$$

$$\$6,720 \text{ (gross income)}$$

$$\$900 \text{ plus } \$140 \text{ plus } \$340 = \$1,380 \text{ (total expense)}$$

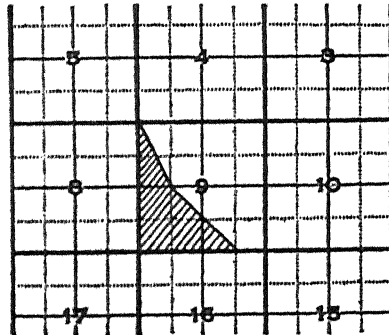
$$\$6,720 \text{ minus } \$1,380 = \$5,340 \text{ (annual net income)}$$

$$\$5,340 \text{ divided by } \$52,000 = 10.27\% \text{ plus (return on investment)}$$

526. One full quarter = 160 acres

$$\frac{1}{4} \text{ of quarter} = 40 \text{ acres}$$

$$160 \div 40 = 200 \text{ acres}$$



527. (a) The South 15' of Lot 7; all of Lot 8 and the East 50' of Lot 9; all in tract 618, as per map recorded in Book 37, page 19, official maps of record of Maricopa County.

(b) $125' \times 15' = 1,875 \text{ sq. ft., Lot 7}$

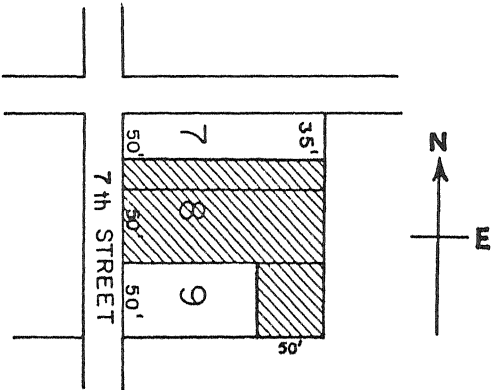
$$125' \times 50' = 6,250 \text{ sq. ft., Lot 8}$$

$$50' \times 50' = 2,500 \text{ sq. ft., Lot 9}$$

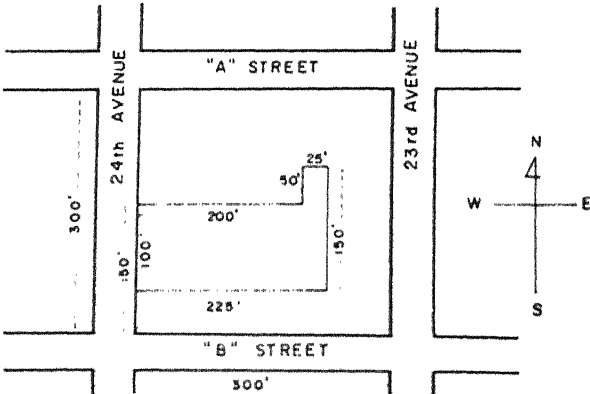
$$10,625 \text{ sq. ft. conveyed portion}$$

(c) $15' + 50' = 65' \text{ frontage on 7th Street}$

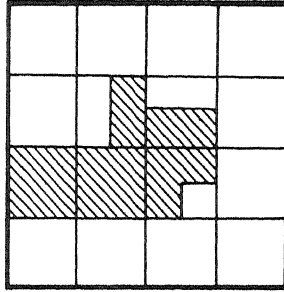
$65 \times \$500 = \$32,500$ front footage on 7th Street
Lot 9 = 2,500 sq. ft.
 $2,500 \times \$2.20 = \$5,500$
 $\$32,500 + \$5,500 = \$38,000$



528. (a) Lot 1 for building
 $100' - 15' = 85'$ with offset
 $85' \times 30' = 2,550$ sq. ft. for building
 $50' - 20' = 30'$ with offset
- (b) From part (a) lot 1 contains 2,550 sq. ft. for building
Lot 2 has $85' \times 50'$ or 4,250 sq. ft.
 $4,250 + 2,550 = 6,800$ sq. ft. in lots 1 and 2
Lot 3 also has 4,250 sq. ft.
Lots 1, 2, and 3 must be bought to have a building on the corner and containing 8,100 sq. ft.
- (c) $4 \times 50' = 200'$ frontage, lots 2, 3, 4, 5.
 $200' \times \$127.50 = \$25,500$ cost for frontage
 $100' \times \$185 = 18,500$
 $\$44,000$ total cost
100' frontage on lot 1
529. (a) See drawing.
(b) $225' \times 100' = 22,500$ sq. ft.
 $25' \times 50' = 1,250$ sq. ft.
23,750 sq. ft. Total area
 $23,750 \times \$4.2 = \$9,975$
 $\$9,975 \times .05 = \498.75 commission



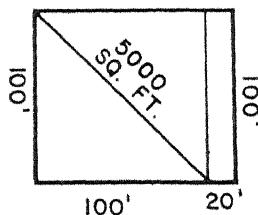
530. 1 section = 640 acres
 $\frac{1}{16}$ of 640 = 40 acres in each square
 $2 \times 40 = 80$ acres in two full squares
2 half squares = 1 full square = 40 acres
 $\frac{3}{4}$ of 40 = 30 acres
 $80 + 40 + 30 = 150$ acres, total



531. Answered with problem.
532. (a) See drawing.
(b) $N \frac{1}{2}$ of Sec. 17 = 320 acres
 $W \frac{1}{2}$ of $W \frac{1}{4}$ of Sec. 25 = 160 acres
 $SW \frac{1}{4}$ of Sec. 32 = 160 acres
 $NE \frac{1}{4}$ of $NW \frac{1}{4}$ of Sec. 4 = 40 acres
(c) $320 + 160 + 160 + 40 = 680$ acres
533. Description contains 3 full sections
1 section = 640 acres
 $3 \times 640 = 1,920$ acres
534. Answer with problem.
535. (a) Shaded area = $\frac{6}{16}$ of section
1 section = 640 acres
 $\frac{6}{16} \times 640 = 240$ acres
(b) $\$23,340 \div 240 = \97.25 cost per acre.
536. $\frac{1}{16}$ of 640 = 40 acres.
537. (a.) $\frac{1}{2} \times \frac{1}{4} \times \frac{1}{4} = \frac{1}{32}$
(b.) $\frac{1}{4} \times \frac{1}{4} = \frac{1}{16}$
(c.) $\frac{1}{4} \times \frac{1}{4} \times \frac{1}{4} = \frac{1}{64}$
(d.) $\frac{1}{2} \times \frac{1}{4} = \frac{1}{8}$

$$\begin{aligned} \frac{1}{32} \times 640 &= 20 \text{ acres} \\ \frac{1}{16} \times 640 &= 40 \text{ acres} \\ \frac{1}{64} \times 640 &= 10 \text{ acres} \\ \frac{1}{8} \times 640 &= 80 \text{ acres} \\ &150 \text{ acres} \end{aligned}$$

- (e.) $150 \times \$52.50 = \$7,875$ S.P.
(f.) $\$7,875 \times .10 = \787.50 commission
538. (e) $200 \times 200 = 40,000$ sq. ft. total
 $\frac{1}{4}$ of 40,000 = 5,000 sq. ft. in described parcel.
(d.) $20 \times 100 = 2,000$ sq. ft.
 $5,000 + 2,000 = 7,000$ sq. ft.
(e.) $120 \times 100 = 12,000$ sq. ft. in lots 8, 9, and 10.
 $40,000 - 12,000 = 28,000$ sq. ft. in balance



539. $\frac{1}{16}$ of 640 = 40 acres.

540. $\frac{1}{4}$ of $\frac{1}{16}$ = $\frac{1}{64}$

$\frac{1}{64}$ of 640 = 10 acres

541. (a & b) See drawing.

640 acres in each section

Sections 9, 10, 15, 16 each contain 320 acres

Secs. 21, 22 each contain 160 acres

$$4 \times 320 = 1280 \text{ acres}$$

$$2 \times 160 = \underline{320} \text{ acres}$$

1600 acres

542-552. Answers with problems.

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